Dated this day of 202

BETWEEN

**TT DOTCOM SDN BHD**

**(Registration No. 197901008085 (52371-A))**

AND

**[*Insert Name of Supplier*]**

**(Registration No. \*\* )**

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**FRAMEWORK AGREEMENT FOR ACTIVE ELEMENTS**

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**THIS AGREEMENT** is made on the day of 202

**BETWEEN:**

**(1) TT DOTCOM SDN BHD (Registration No. 197901008085 (52371-A))**, a company incorporated in Malaysia whose registered office is at No.14, Jalan Majistret U1/26, HICOM Glenmarie Industrial Park, 40150 Shah Alam, Selangor (“**Customer**”) of the one part;

**AND**

**(2) [***Insert the Name of Supplier***] (Registration No. \*\*\*)**, a company incorporated in [Malaysia] whose registered office is at [*insert address*] (“**Supplier**”) of the other part.

**WHEREAS:**

**(A)** The Customer is licensed under the Communications and Multimedia Act 1998 to own and provide network facilities, network services and applications services within Malaysia.

**(B)** The Supplier is in the business of supplying and/or providing telecommunications infrastructure system, hardware, software and services.

**(C)** The Customer wishes to enter into this Agreement, which is a master framework agreement, with the Supplier for the provision of System, Hardware, Software and/or Services in accordance with the terms of this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

# 1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, the definitions and interpretation of all words used in this Agreement, the Statement of Work and Purchase Order are contained in **Schedule 1 (Definitions and Interpretation)**.

# 2. GENERAL SCOPE OF THE AGREEMENT

2.1 This Agreement governs the purchase and license by the Customer and the provision by the Supplier of Hardware, Software or Services separately and/or in combination with each other to form a System. In this respect, the Customer may purchase and license under a Purchase Order(s):

2.1.1 a System solution; or

2.1.2 Hardware, Software and/or Services on a standalone basis or in combination with each other as part of an expansion of a System.

2.2 The Deliverables may be purchased on a turnkey or non-turnkey basis in accordance with the terms of this Agreement and the Statement of Work.

2.3 The Customer may engage a third party to provide any services in relation to any System, Hardware or Software without affecting or diminishing any warranties provided by the Supplier in this Agreement and the Statement of Work.

# 3. STRUCTURE OF THIS AGREEMENT

3.1 This Agreement comprises the following documents which shall be read and construed as an integral part of this Agreement:

3.1.1 this Agreement consisting of:

(a) the main body of this Agreement;

(b) Schedule 1 – Definitions and Interpretations;

(c) Schedule 2 – Forms and Templates;

(d) Schedule 3 – Customer’s Business Integrity & Anti-Corruption Policy;

(e) Schedule 4 – Migration Issues;

(f) Schedule 5 – Customer’s Data Processing Terms (if applicable);

3.1.2 Statement of Work(s) executed pursuant to this Agreement; and

3.1.3 Purchase Order(s) issued pursuant to the Statement of Work(s) executed pursuant to this Agreement,

as updated, amended or replaced by the Parties from time to time in accordance with the terms of this Agreement.

3.2 Subject to **Clause 3.4**, the documents forming this Agreement are to be taken as mutually explanatory of one another save to the extent any of them expressly provides otherwise.

3.3 **Schedule 4 – Migration Issues**

Unless otherwise agreed between the Parties and set out in **Schedule 4**, the Pre-Existing Agreement shall:

3.3.1 not be superseded by this Agreement;

3.3.2 continue to be in full force and effect in accordance with its terms; and

3.3.3 continue to govern all purchase orders issued thereunder.

3.4 **Order of Precedence**

If there is any conflict or inconsistency between the documents forming this Agreement, such conflict or inconsistency shall be resolved in accordance with the following order of precedence:

3.4.1 the Purchase Order (but excluding any pre-printed terms and conditions in the Purchase Order including any pre-printed terms and conditions of the Supplier on the Supplier’s delivery note or referred to or inserted by the Supplier in any Purchase Order, all of which shall be regarded as null and void);

3.4.2 the Statement of Work; and

3.4.3 this Agreement.

# 4. STATEMENT OF WORK

4.1 The Statement of Work is a separate document(s) executed or to be executed between the Parties for a particular purchase(s) and/or project(s) to be undertaken under this Agreement. The Statement of Work is not annexed to this Agreement but shall form an integral part of this Agreement. The terms and conditions in this Agreement shall govern the Statement of Work subject to such additions and modifications stated in the Statement of Work.

4.2 The Statement of Work shall contain the specific details and the scope of works of the purchase(s) or project(s) including but not limited to the following, where applicable:

4.2.1 System, Hardware, Software and/or Services to be provided by the Supplier;

4.2.2 Charges and pricing terms;

4.2.3 service levels and/or key performance indicators;

4.2.4 agreed liquidated damages and/or service credits;

4.2.5 the Project Schedule including the Milestone Date, Delivery Date and Completion Date;

4.2.6 the requirement and/or quantum of the Performance Guarantee;

4.2.7 the requirement and/or quantum of the Parent Guarantee;

4.2.8 Specifications and functional and technical requirements;

4.2.9 Implementation Plan;

4.2.10 Responsibility Matrix of the Parties;

4.2.11 Acceptance Test Procedure and Criteria;

4.2.12 the requirement and/or quantum of the Performance Guarantee and/or Parent Guarantee; and

4.2.13 any other terms and conditions (including any commercial terms) which are specific to the purchase and/or project under the said Statement of Work.

4.3 The format of the Statement of Work is prescribed in **Part A of Schedule 2**.

4.4 The Customer is not obliged to purchase and/or to pay for any System, Hardware, Software and/or Services under any executed Statement of Work until and unless a Purchase Order with respect to the Statement of Work is issued by the Customer and accepted by the Supplier in accordance with this Agreement.

# 5. PURCHASE ORDER

5.1 **General**

5.1.1 Each Purchase Order issued by the Customer and accepted by the Supplier shall constitute a binding contract between the Customer and the Supplier, and governed by the terms and conditions of this Agreement and the Statement of Work to which it relates. Any pre-printed terms and conditions in the Purchase Order including any pre-printed terms and conditions of the Supplier on the Supplier’s delivery note or referred to or inserted by the Supplier in any Purchase Order shall be null and void.

5.1.2 The Purchase Order shall refer to the following documents and/or information, which shall form an integral part of the Purchase Order:

(a) the relevant Statement of Work;

(b) System, Hardware, Software and Services ordered including the order number, quantities, pricing, agreed delivery method, the Place of Delivery and the Delivery Date; and

(c) other documents and information which the Customer reasonably believes shall form part of the Purchase Order.

5.2 **Procedure for Ordering**

5.2.1 The Customer may, at any time and from time to time, order any System, Hardware, Software and/or Services (based on the relevant pricing set out in the Statement of Work) by issuing a Purchase Order to the Supplier.

5.2.2 The Supplier may only reject a Purchase Order within one (1) Business Day from the date of receipt of the Purchase Order from the Customer, failing which it shall be deemed to have been accepted by the Supplier. The Supplier may only reject a Purchase Order if it is incomplete or in conflict with the Statement of Work.

5.2.3 If the Supplier rejects a Purchase Order, the Supplier shall promptly notify the Customer of the reasons for such rejection. If the Customer elects not to cancel such Purchase Order, the Parties shall agree to amend and adjust such Purchase Order accordingly.

5.3 **Amending or Cancelling a Purchase Order**

5.3.1 The Customer may amend a Purchase Order by way of a Change Request, in accordance with **Clause 24**.

5.3.2 The Customer may cancel any Purchase Order in whole or in part, without any liability, by written notice at any time provided that such cancellation is any time before the delivery, installation or performance date of such Deliverables. Upon such cancellation, any monies which have been paid in advance by the Customer to the Supplier, shall be refunded by the Supplier to the Customer within seven (7) days from the date of receipt of the cancellation notice by the Supplier.

# 6. CHARGES

6.1 **General**

6.1.1 The Charges for any Deliverable shall be as specified in and calculated in accordance with the Statement of Work.

6.1.2 Unless otherwise agreed by the Parties in the Statement of Work, all prices shall be quoted in Ringgit Malaysia.

6.2 **Sufficiency of the Purchase Order and Charges**

The Supplier warrants that, as at the time of acceptance of each Purchase Order, it has satisfied itself as to the correctness and sufficiency of:

6.2.1 the Purchase Order including all documents forming part of the Purchase Order; and

6.2.2 the Charges set out in the Purchase Order, which shall be the full and exclusive remuneration of the Supplier for the provision of the Deliverables specified in the Purchase Order and all other scope, matters and things which are in connection with, incidental, ancillary and in any way imperative to or to be inferred from the provision of the Deliverables to the Customer.

The Supplier further warrants and confirms that there will not be any other charges besides the Charges in that Purchase Order for the activation of any codes (whether Hardware or Software activation codes) to utilize any features in a Software.

6.3 **Supplier Responsible for Cost of Performing its Obligations**

6.3.1 The Supplier agrees that it is fully responsible for the cost of performing all its obligations under any Purchase Order and the time required to carry out and complete such obligations and shall be deemed to have obtained all information and taken into account all circumstances which may affect such cost and time before agreeing to the Charges and the terms of the Purchase Order.

# 7. INVOICING AND PAYMENT

7.1 **Invoicing**

7.1.1 Each Invoice issued by the Supplier pursuant to any Purchase Order shall specify:

(a) the Purchase Order numbers under which any Deliverables were ordered;

(b) the Statement of Work and description of the Deliverables ordered;

(c) the line item and the quantity for each Deliverable ordered;

(d) the Purchase Order Price including the breakdown of the price for each Deliverable;

(e) any applicable tax and the relevant tax registration number;

(f) payment due date;

(g) account details to which payment is to be made to; and

(h) any other information reasonably required by the Customer to process the payment.

7.1.2 All Invoices shall be accompanied by applicable supporting documents to enable the Customer to verify the contents and the amounts of the Invoice, failing which the Customer may reject an Invoice.

7.1.3 Any Invoice submitted shall be in accordance with the invoicing milestone set out in the Statement of Work and/or Purchase Order, as applicable.

7.2 **Over-Charging or Error in Charging**

If the Supplier has over-charged and/or wrongly charged the Customer for any Deliverables and the Customer has paid for the same, then:

7.2.1 where there is an overpayment, the Supplier shall immediately refund such overcharged amount directly to the Customer and the Supplier shall not be entitled to offset and/or contra such overcharged amount against any other sum owed or owing to the Supplier unless otherwise agreed by the Customer; or

7.2.2 where there is an amount undercharged, the Supplier shall, subject to **Clause 7.3**, invoice the Customer for the balance amount due by the Customer,

provided the overpaid or underpaid amounts are not disputed by the Parties.

7.3 **Back-Billing**

All Invoices must be issued to the Customer within six (6) months from the date in which the Invoice should have been issued (“**Invoicing Period**”), failing which the Supplier shall be deemed to have waived and forfeited its rights to issue the Invoice. The Customer is not obligated to pay any late Invoice issued after the Invoicing Period.

7.4 **Payment**

7.4.1 Subject to **Clause 7.1 to Clause 7.3, Clause 8.6 and Clause 9.4**, the Customer shall pay the Supplier all amounts undisputed by the Customer in the Invoice within forty-five (45) days from the date of receipt of the Invoice provided that the Purchase Order to which the Invoice relates has been issued in accordance with **Clause 5.1**.

7.4.2 All payments will be made in Ringgit Malaysia or such other currency agreed between the Parties.

7.4.3 The Customer may at all times set-off any amounts due to the Supplier with any amounts that the Supplier owes to the Customer under this Agreement, Purchase Order or such other agreement entered pursuant to this Agreement.

7.4.4 Any payments made by the Customer to the Supplier prior to the Acceptance of a Deliverable shall be without prejudice to the Customer’s right to reject the Deliverables in accordance with the terms of this Agreement and/or Purchase Order.

7.5 **Payment Disputes**

7.5.1 The Customer may, with reasons, dispute any amount paid to or invoiced by the Supplier notwithstanding that payment has been made under a Purchase Order. The Parties agree in good faith to resolve the billing dispute within thirty (30) days from the date of the billing dispute failing which such dispute must be resolved in accordance with **Clause 49**.

7.5.2 The Customer may withhold the disputed amount of any invoice for such period of time as is required to resolve any such dispute. The provision of any Deliverables shall not be suspended by the Supplier on the basis that the Customer has withheld the disputed amount in accordance with this **Clause 7**.

7.6 **Tax**

7.6.1 The Charges stated in the Statement of Work shall be inclusive of all the applicable taxes, duties and levies unless stated otherwise in the Statement of Work.

7.6.2 Withholding of Tax

The Supplier shall be responsible for any tax that might be incurred by the Supplier in the Customer’s country as a result of incomes or revenue obtained by the Supplier arising from and/or in connection with this Agreement, Statement of Work and/or Purchase Order. If withholding taxes are payable in the Customer’s country, the Customer shall withhold such sums from the Supplier taking into account the bilateral fiscal agreement between the Customer and Supplier’s countries to avoid double taxation and pay to the relevant authorities in accordance with the Applicable Laws. The onus shall be on the Supplier to obtain official documents from local authorities and provide a copy of these official documents to the Customer if the Supplier deems withholding taxes are waived, whether partially or in full, in the Customer’s country. Where payment of withholding taxes is made by the Customer, the Customer shall provide to the Supplier, as soon as reasonably practicable following the month the withholding tax is levied, an original or duplicate original or a certified copy of the official tax receipt or other appropriate evidence issued by the relevant tax authorities in the name of the Supplier for any tax which is paid on behalf of the Supplier.

# 8. PERFORMANCE GUARANTEE

8.1 If required under a Statement of Work, the Supplier shall provide one or more “on-demand”, irrevocable and unconditional bank guarantee in a form and issued by a reputable financial institution acceptable to the Customer (“**Performance Guarantee**”) as security for the due observance and performance by the Supplier of all terms and conditions of the Purchase Order. The Supplier shall, no later than the period or date prescribed in the Purchase Order, and if no such date is so prescribed, within ten (10) days after the acceptance of the Purchase Order, provide to the Customer one or more Performance Guarantee at the Supplier’s sole cost and expense.

8.2 The Performance Guarantee(s) shall be in the amounts prescribed in the Statement of Work.

8.3 The Performance Guarantee shall be valid for the duration stipulated in the Statement of Work.

8.4 The Customer may at any time and from time to time make a demand on all or any part of the amounts represented in the Performance Guarantee in the event that the Supplier fails to perform or fulfil any term of and/or any of its obligations under the Purchase Order. If payment is made to the Customer pursuant to any claim or demand under the Performance Guarantee, the Supplier shall, at its own cost and expense, provide to the Customer further security in the form of an additional Performance Guarantee for the amount not less than the amount so paid to the Customer on or prior to the date of such payment so that the total value of the Performance Guarantee shall be maintained at all times. The failure on the part of the Supplier to provide or maintain the Performance Guarantee shall be treated as a material breach of this Agreement and Purchase Order.

8.5 The Performance Guarantee shall be renewed or extended by the Supplier, at its own cost and expense, one (1) month prior to the expiry date of such Performance Guarantee in the same form and amount save as to the expiry date therein contained so that the Performance Guarantee shall remain valid and in full force and effect for the benefit of the Customer for the duration stipulated in the Statement of Work or the Purchase Order, as the case may be.

8.6 Notwithstanding anything to the contrary, the Customer shall not be obliged to make any payment under a Purchase Order unless and until the Performance Guarantee is provided and delivered to the Customer in accordance with this **Clause 8**.

# 9. PARENT GUARANTEE

9.1 If required under a Statement of Work, the Supplier shall procure a parent guarantee (“**Parent Guarantee**”) in a form acceptable to the Customer as security for the due observance and performance by the Supplier of all terms and conditions of the Purchase Order. The Supplier shall, no later than the period or date prescribed in the Purchase Order, and if no such date is so prescribed, within ten (10) days after the acceptance of the Purchase Order, provide to the Customer the said Parent Guarantee at the Supplier’s sole cost and expense.

9.2 The Parent Guarantee shall be provided by the holding company or ultimate holding company of the Supplier which is acceptable to the Customer.

9.3 For avoidance of doubt, the provision of the Performance Guarantee pursuant to **Clause 8** shall not preclude the Customer from requesting for a Parent Guarantee under this **Clause 9** and vice versa.

9.4 Notwithstanding anything to the contrary, the Customer shall not be obliged to make any payment under a Purchase Order unless and until the Parent Guarantee is provided and delivered to the Customer in accordance with this **Clause 9**.

9.5 The Parent Guarantee shall substantially be in the format set out in **Part B of Schedule 2** unless otherwise agreed by the Customer.

# 10. DELIVERY

10.1 **Delivery**

10.1.1 The Deliverables shall be supplied and delivered by the Supplier in accordance with the Specifications to the Place of Delivery and in the quality and quantity specified in the Statement of Work and/or Purchase Order on the agreed Delivery Date.

10.1.2 The Deliverables shall be supplied and delivered in accordance with the International Commercial Terms 2020 (as updated from time to time) (“**INCOTERMS**”) agreed in the Statement of Work or Purchase Order other than as modified or varied by this Agreement, Statement of Work and/or Purchase Order including but not limited to the provisions on title and risk transfer in this Agreement. If there are any inconsistencies between the trade terms in the agreed INCOTERMS and this Agreement, the Statement of Work and/or Purchase Order, the terms in this Agreement, the Statement of Work and/or Purchase Order shall take precedence.

10.1.3 If the Deliverables are delivered prior to the agreed Delivery Date without prior agreement of the Customer, the Customer is not obliged to accept Delivery of the Deliverables. In such circumstances, the Supplier shall bear all additional costs and expenses to remove the Deliverables from the Place of Delivery and to re-Deliver the Deliverables on the agreed Delivery Date. The acceptance of the Deliverables prior to the agreed Delivery Date by the Customer shall not entitle the Supplier to invoice or demand for early payment.

10.2 **Inspection**

10.2.1 If applicable, the Customer shall inspect any Deliverables within three (3) Business Days from the Delivery Date to verify that:

(a) the Deliverables are in good condition by way of visual inspection only;

(b) the Delivery consists of the Deliverables in the consignment note and consists of the agreed quantity; and

(c) the contents of the Delivery or the packaging is not damaged or that packaging appears to comply with the relevant consignment document.

10.2.2 If all the quantities of Deliverables are correct and there is no visible damage to any Deliverables, the Customer may within five (5) Business Days after completion of the inspection, issue a Goods Receipt Notice to the Supplier.

10.2.3 The inspection of the Deliverables and issuance of the Goods Receipt Notice shall not be construed in any way whatsoever as confirmation that all Deliverables meet the Specifications or are workable.

10.3 **Right of the Customer to Refuse Delivery**

The Customer may refuse to accept Delivery in whole or in part if:

10.3.1 the Deliverables are not in good condition;

10.3.2 the Delivery does not consist of the Deliverables in the consignment note and/or does not consist of the agreed quantity; or

10.3.3 the contents of the Delivery or the packaging is damaged or does not comply with the requirements of the Statement of Work and/or Purchase Order.

In such instance, the Supplier shall retain possession and risk of any of the Deliverables that has not been accepted by the Customer, at its own cost. The Supplier’s obligations under the Purchase Order shall continue to apply and subsist unless and until the remainder of the Deliverables have been delivered in accordance with this Agreement and Purchase Order.

10.4 **Supplier May Not Withhold Deliveries or Suspend Performance**

The Supplier shall not withhold the delivery of or suspend the performance of any Deliverables or its obligations under any Purchase Order in the event of a Dispute, including a Dispute in relation to any Invoices issued pursuant to a Purchase Order, or a failure of the Customer to make any payment pursuant to a Purchase Order or failure of the performance by the Customer of its obligations under a Purchase Order, until all potential remedies have been exhausted.

10.5 **Damaged Deliverables**

If the Customer discovers during unpacking of the consignments or during transit to the Customer’s premises or site that any Deliverables are damaged or parts or components are missing, the damaged Deliverables or parts or components lost shall be replaced with new components or parts upon notification from the Customer no later than the Delivery Date. The costs of such replacement or any costs in connection or incidental to it shall be borne by the Supplier.

10.6 **Other Delivery Requirements**

10.6.1 The Supplier shall, at its own cost and expense, ensure that:

(a) it complies with all shipping and Delivery requirements;

(b) all Deliverables imported or exported shall be in accordance with the Applicable Laws; and

(c) it obtains all the requisite permits or approvals required for importing or exporting the Deliverables unless it is expressed that the Customer has the responsibility to make the applications. In such event, the Supplier shall provide assistance to the Customer to make such applications for obtaining permits or approvals.

10.6.2 If Deliverables are non-compliant with any of the requirements set out in **Clause 10.6.1**, the Customer may reject such Deliverables and any costs and expenses arising from such non-compliance shall be borne by the Supplier.

10.6.3 The Customer or its agent is to be kept notified by the Supplier at all times on the progress of the carriage and delivery or supply of the Deliverables including any updates thereto.

# 11. IMPLEMENTATION PLAN

11.1 If required by the Customer, the Implementation Plan shall be incorporated into the Statement of Work. Prior to finalization of the Statement of Work, the Supplier shall deliver to the Customer a draft Implementation Plan for the Customer's review and approval.

11.2 Each Implementation Plan shall include the following:

11.2.1 starting dates, planned completion, access dates, key dates, Milestones Dates and Completion Date;

11.2.2 the order and timing of operations which the Supplier plans to do in order to meet its obligations;

11.2.3 the order and timing of the work of the Customer and third parties as may be agreed with the Supplier or, if not so agreed, as stated in the Purchase Order;

11.2.4 the dates when the Supplier plans to achieve each condition of the Purchase Order stated for each key date and to complete other work needed to allow the Customer and third parties to do their work;

11.2.5 provisions for float, time risk allowances, health and safety requirements and the procedures set out in the Statement of Work or Purchase Order;

11.2.6 an overview of activities with a statement of how the Supplier plans to carry out the work identifying the resources which it plans to use; and

11.2.7 other matters and information which are required for the implementation of the project contemplated in the Statement of Work.

11.3 The drafts of the Implementation Plan, including any updates thereto, is subject to the Customer’s review and comments. The Customer's reasonable comment is to be taken into account and implemented.

11.4 The Implementation Plan(s) shall be kept up to date by the Supplier and each revision shall at least contain:

11.4.1 the actual progress achieved on each operation and its effect upon the timing of the remaining work;

11.4.2 the effects of any delay, acceleration or variation events;

11.4.3 how the Supplier plans to deal with any delays and to correct any Defects and;

11.4.4 any other changes which the Supplier proposes to make to the accepted Implementation Plan(s) (which must not impact upon the overall agreed Milestone Dates).

In this respect, any revision to the Implementation Plan must be submitted to the Customer for acceptance within three (3) Business Days from the date the Customer made the request or changes having been made, as applicable.

11.5 The Supplier shall ensure that it achieves each Milestone by the agreed Milestone Date and shall ensure that all works are completed on or before the Completion Date.

11.6 Subject to the other provisions in this **Clause 11** and except for changes made pursuant to this **Clause 11**, all changes to the Implementation Plan following its approval by the Customer shall be subject to the Change Request procedure.

11.7 Any approval of or objections raised by the Customer regarding the Implementation Plan shall not relieve the Supplier of any of its obligations under this Agreement and/or Purchase Order.

# 12. RESPONSIBILITY FOR DESIGN

12.1 Unless otherwise stated in the Statement of Work or Purchase Order, all Purchase Orders shall require the Supplier to dimension and design a System (including defining and setting all the data parameters of the Software) to perform in accordance with the requirements of the Customer stated in the Statement of Work and to be fully responsible for such dimensioning and designing of a System.

12.2 The Supplier shall be responsible for the design of the System and shall develop a design to procure a complete Specification of each and every part of the System. The Specifications shall be adhered by the Supplier to ensure that the System and Network as a whole and each and every part will, when complete, jointly and, as appropriate, severally meet in all respects the requirements of the Statement of Work and this Agreement.

12.3 All the Supplier’s designs are to be submitted to the Customer for approval. Any input and/or design approval given by the Customer does not relieve the Supplier of any of its obligations under this Agreement and/or Purchase Order and is not deemed to be acceptance of any part of the work to be performed.

12.4 The Supplier is not absolved of liability under this Agreement or Purchase Order for a breach of warranty or other obligations solely by virtue of the Customer having participated in the preparation or definition of the Specification, or having considered or reviewed any Documentation or information in relation to the Network, System or a part of the Network or System.

12.5 In the event that the System or part thereof is to be replaced or modified due to the need to improve its design during the term of this Agreement, any such replacement or modification shall be undertaken by way of a Change Request.

12.6 The Supplier shall inform and provide the Customer in writing with all information on the latest technical developments and improvements to the System. The Supplier shall also state the flexibility of the System in incorporating such new developments and improvements as soon as such technical information becomes available to the Supplier.

12.7 In the event that either Party intends to change the design of the System due to obsolescence, notice should be given to the other Party and the new design shall be offered by the Supplier to the Customer at a price not exceeding the Charges of the existing System, which had become obsolete. The Supplier shall ensure that the replacement System shall inter-operate seamlessly with any existing design and equipment.

# 13. SERVICES

13.1 The Customer may order Services on a standalone basis or in combination with any Hardware and Software to form a System solution. The types of Services which may be purchased by the Customer in a Purchase Order includes:

13.1.1 Installation and Commissioning services;

13.1.2 Integration Services;

13.1.3 end to end Turnkey Services; and/or

13.1.4 such other Services as may be set out in the Statement of Work.

The detailed scope of works and terms of the relevant Services shall be as stipulated in the Statement of Work.

13.2 Where the Customer requires Installation, Commissioning and/or Integration Services to be provided with the System, the Supplier undertakes to provide a solution that enables the Customer to have a System that interworks and interoperates with the Network, and the System as a whole and every part will, when complete, jointly fulfil the requirements of the Specifications, the provisions under this Agreement, the Statement of Work and the Purchase Order. The Supplier shall provide all that is necessary or reasonable to be inferred or implied from the Statement of Work to provide the System solution less any scope of service that is expressly excluded in the Statement of Work.

13.3 Where the Customer purchases Installation and/or Commissioning services in a Purchase Order,

13.3.1 the Supplier shall perform the installation of all Deliverables into the relevant part of the Network and place all Deliverables into service; and/or

13.3.2 the Supplier shall carry out all required Installation, optimisation, Commissioning and other services including to dismantle existing equipment (if required) in accordance with the Purchase Order, Statement of Work, the Implementation Plan and all Specifications.

13.4 Where the Customer purchases Integration Services in a Purchase Order, the Supplier shall provide the Integration Services in accordance with the provisions of this Agreement, the Statement of Work and the Purchase Order. Without prejudice to the generality of the foregoing, the Supplier shall:

13.4.1 adapt the relevant Deliverables for operational integration into the Network;

13.4.2 perform integration tests, including tests relating to the inter-conjunction of the relevant Deliverables with the Network;

13.4.3 verify the operation of Deliverables with the Network, the interfaces, conjunctions, inter-working relations, mediations, links and payload and traffic or data management flows of the Network; and/or

13.4.4 provide to the Customer, within three (3) Business Days upon the completion of the verification referred to in **Clause 13.4.3** above or such other period otherwise specified in the Implementation Plan, an integration report specifying the result of such verification and the list of outstanding issues and action plans which the Supplier shall undertake.

# 14. MULTI-SUPPLIER INTEGRATION AND INTER-OPERABILITY

14.1 The Supplier shall ensure that each Deliverable:

14.1.1 complies with and performs in accordance with the Specifications, protocols and other requirements as set out in the Statement of Work for Multi-Supplier Integration and Inter-operability;

14.1.2 complies with and performs in accordance with Industry Standards for Multi-Supplier Integration and Inter-operability and the Supplier shall provide an interface fulfilling the Interface Industry Standards; and

14.1.3 inter-works and Inter-operate seamlessly in accordance with the Statement of Work with the:

(a) Network (existing and future);

(b) third party products, systems and networks; and/or

(c) other telecommunications networks in Malaysia;

((a), (b) and (c) shall be collectively known as “**Internal & External Systems**”)

provided that the Internal & External Systems’ interface and any expansion of the Network complies with the relevant Industry Standards and Interface Industry Standards;

The requirements in **Clause 14.1.1, Clause 14.1.2** and **Clause 14.1.3** shall form a part of the Provisional Acceptance Test for a System.

14.2 Notwithstanding the above, if an interface of the Supplier’s Deliverables is not compliant with the Interface Industry Standards, the Supplier undertakes to work towards and ensure such interface be inter-operable so that there will be no degradation to service to the System or the Network unless otherwise stated in the Statement of Work.

14.3 The Supplier shall disclose, supply and grant a perpetual, irrevocable, fully paid, royalty-free and non-exclusive license to possess, use, develop, modify and copy to the Customer, its Affiliates and each third party supplier of products, equipment software and/or services in respect of the Network and Deliverables (“**said Third Party Supplier**”), the Inter-operability information and Inter-operability Deliverables which is necessary for the purpose of integration and Inter-operability of the Network (including modifications for maintaining interfaces, compatibility, interoperability and integration between the Deliverables and Internal & External Systems). For the avoidance of doubt, “develop” and “modify” as used above shall require the prior approval of the Supplier.

14.4 The Supplier shall fully cooperate with the Customer and the Customer’s suppliers with respect to the interfacing, integration and Inter-operability of the Deliverables, with the Internal & External Systems according to the interface, performance and Inter-operability Specifications and requirements as agreed in the Statement of Work and/or Industry Standards in a timely manner including where applicable:

14.4.1 in respect of the Inter-operability Tests and the Multi-Supplier Integration Tests,

(a) providing all necessary cooperation and assistance required or requested by the Customer and any Customer’s suppliers in conjunction thereto, for the achievement of Multi-Supplier Integration and Inter-operability; and

(b) providing all information and other cooperation necessary and appropriate for the Customer and the Customer’s suppliers to perform the work assigned to them to achieve Multi-Supplier Integration and Inter-operability provided the Customer’s supplier shall sign a non-confidentiality undertaking in favour of the Supplier on terms which are substantially similar to the terms set out in this Agreement.

14.4.2 in respect of faults, defects or bugs arising from Multi-Supplier Integration and Inter-operability, to locate, identify, resolve and fix faults which the Supplier is responsible to fix within its scope of work, defects, errors, bugs, differences or conflicts occurring in the Deliverables which are, necessary to achieve Multi-Supplier Integration and Inter-operability.

14.5 If any Deliverables due to the Supplier’s fault, fail to interoperate with any of the Internal & External Systems in accordance with **Clause 14.1**, the Customer may, without prejudice to any other right available to the Customer under this Agreement or at law, require that the Supplier, at its own cost and without undue delay, takes all corrective measures in order to secure interoperation of the System with the Internal & External Systems in accordance with the Specifications and Statement of Work including, but not limited to, modification of the Hardware and/or Software, replacement of Hardware and/or Software, Installation and Integration of additional Hardware and/or Software (such additional Hardware, and/or Software to be provided to the Customer free of charge) and/or complete replacement of the Hardware and/or Software with new Hardware and Software (such new Hardware, and/or Software to be provided to the Customer free of charge).

# 15. ACCEPTANCE

15.1 **Acceptance Tests Procedures and Criteria**

15.1.1 Acceptance Tests for any Deliverables is to be conducted jointly by the Supplier and the Customer, physically unless the Parties mutually agree to remote testing. The detailed test specifications and key performance indicators for each Acceptance Test shall conform to the applicable provisions of the Acceptance Tests Procedures and Criteria.

15.1.2 All Acceptance Tests Procedures and Criteria developed shall suitably demonstrate that the Deliverables fulfil the relevant Specifications and other requirements in the Statement of Work.

15.1.3 The Acceptance Test Procedure and Criteria shall consist of:

(a) an Acceptance Test of any Hardware or Software, on a standalone basis; or

(b) where a Purchase Order requires the Supplier to provide a System and/or perform any Services, there shall be:

(i) a Provisional Acceptance Test; and

(ii) a Final Acceptance Test.

15.1.4 The main objective of the Acceptance Test is to inspect any Hardware or Software delivered on a standalone basis in accordance with **Clause 10.2.1**.

15.1.5 The main objective of the Provisional Acceptance Test is to test:

(a) if a Deliverable is successfully Installed, Integrated with the Network and Commissioned;

(b) if a Deliverable conforms to, performs in accordance with, the Specifications and meet the PAT Requirements in a live but controlled environment; and

(c) that no Severity 1 or Severity 2 Defect exist.

15.1.6 The main objective of the Final Acceptance Test is:

(a) an end to end testing of the successful Commissioning of all Deliverables;

(b) where applicable, to assess the Integration and performance of all Deliverables in the live Network; and

(c) to test the compatibility, interoperability and interworking of all Deliverables in the live Network,

in accordance with the Specifications, Acceptance Test Procedure and Criteria for Final Acceptance and that the Punch List as agreed during the Provisional Acceptance Test has been fully resolved.

15.1.7 The Acceptance Test for the purchase of Hardware or Software on a standalone basis shall be within five (5) Business Days after Delivery of any Hardware or Software unless the Parties agree otherwise in the Statement of Work. In other cases, the Provisional Acceptance Test and Final Acceptance Test shall be performed by the date specified in the relevant Implementation Plan. Any deviation to the agreed date of testing shall be subject to the Customer’s prior approval.

15.1.8 The Acceptance Test Procedures and Criteria for the Provisional Acceptance Test and/or Final Acceptance Test shall be included in the Statement of Work.

15.1.9 The results of any Acceptance Tests including the classifications of Defects in Severity 1, Severity 2 and Severity 3, as the case may be, shall be recorded by the Supplier and countersigned by the Customer.

15.1.10 **Provisional Acceptance**

(a) The System and System expansions of Hardware, Software and/or Services shall be subject to Provisional Acceptance Test. The Provisional Acceptance Test shall be performed at a System level or any other technically motivated level as agreed in the Statement of Work. The Provisional Acceptance Testing is successfully performed when there are no Severity 1 or Severity 2 Defects remain in the System.

(b) A Punch List shall be prepared by the Customer in cooperation with the Supplier during the respective Provisional Acceptance Test. The Punch List shall list all Defects ranked as Severity 3 Defects identified during the respective Provisional Acceptance Test, if any, and shall be rectified before Final Acceptance. The Supplier shall be fully responsible and bear all costs for the rectification of any Defects listed on the Punch List.

(c) The Provisional Acceptance Certificate will, without undue delay, be issued no later than five (5) Business Days from the resolution of all Severity 1 and Severity 2 Defects.

15.1.11 **Final Acceptance**

Final Acceptance of any Deliverables shall occur when the defects on the Punch List as agreed by the Parties during Provisional Acceptance have been fully resolved whereupon the Customer will without undue delay issue a Final Acceptance Certificate no later than five (5) Business Days from the date of notification by the Supplier that the Final Acceptance Tests has been completed.

15.2 **Acceptance Tests Failure**

15.2.1 If the Acceptance Test is unsuccessful including failing to comply with the relevant Specifications, then the Customer may, without prejudice to the Customer’s other rights and remedies, by written notice to the Supplier elect to fix a new date for repeating the relevant Acceptance Test or carrying out further Acceptance Tests on the same terms and conditions for the Deliverables or any part of the Deliverables which failed the said Acceptance Test. The Supplier shall reimburse all costs which the Customer may incur as a result of carrying out such further Acceptance Tests.

15.2.2 The Supplier shall replace or repair the defective Deliverables or all parts necessary to ensure the successful conduct of the relevant Acceptance Test. Any such repair or replacement shall be at no cost to the Customer. In addition, the Supplier shall provide its own installation and test tools during the period of Installation as well as Acceptance Testing.

15.2.3 If any part of the Deliverables fails to pass the applicable Acceptance Tests including where a Deliverable within the Network or the Network’s performance levels does not perform to full functionality or meet the required functionalities or Specifications after two (2) repeated Acceptance Tests, the Supplier shall be considered to be in material breach of the relevant Purchase Order and the Customer may reject such Deliverables or elect to exercise its rights and remedies under in this Agreement.

**15.3 Supplier’s Responsibilities**

15.3.1 Upon completion of any applicable Provisional or Final Acceptance Tests or other tests that may be applicable from time to time, the Supplier shall ensure that all functionality or other provisions of whatsoever nature that are utilised during such tests remain active and are not turned off or suppressed. The Supplier acknowledges that if successful completion of such tests was based upon all of the active functionalities that were turned on and as such, should the Supplier subsequent to receiving any acceptance proceed to deactivate any such functionalities or interfaces without the consent of the Customer, then the acceptance shall be deemed withdrawn and any payment that may have been due will become void. If any payment has been made by the Customer, then such payment shall be returned to the Customer within fourteen (14) days from the date of the deactivation of any functionalities or interfaces.

15.3.2 All Deliverables shall be integrated with and acceptance tested in an operating environment at the relevant premises or site and the Supplier shall make all necessary preparations to mitigate any disturbance and interference to the Customer’s Network save and except for any scheduled interference or disturbance as agreed with the Customer.

15.4 **Preservation of Customer’s Rights**

Acceptance by and the issuance of an Acceptance Certificate by the Customer shall be without prejudice to the Customer’s rights and remedies arising under this Agreement.

# 16. COMMERCIAL SERVICES

16.1 The Customer shall have the right to use any Deliverables or parts of Deliverables for the provision of Commercial Services to its customers, potential customers and subscribers at any time in the event the Supplier is late on the Delivery Date or Commissioning date. The Customer shall assist the Supplier to access the relevant premises or sites which have been selected for the provision of Commercial Service to complete its remaining obligations under a Purchase Order. The Supplier shall plan its activities to avoid disturbance or interruption to the Customer’s Commercial Service and/or operations at the said premises or site and in the event such premises or sites need to be taken out of service, such activities shall be conducted during the agreed service window.

16.2 Notwithstanding any commercial use by the Customer in accordance with **Clause 16.1**, the Supplier shall insure and keep the works in the manner as stipulated in this Agreement and the Supplier shall ensure that any insurance provisions are not invalidated due to such possession by the Customer.

16.3 Nothing contained in this **Clause 16** shall release the Supplier from:

16.3.1 any liability arising from its failure to meet the Delivery Date or Milestone Date;

16.3.2 its other obligations under the Purchase Order; and/or

16.3.3 any bond/guarantee or other instrument that has been entered into as part of this Agreement or any Purchase Order(s).

16.4 No Acceptance Certificate shall be deemed to be issued by virtue of Commercial Service.

# 17. TITLE AND RISK

17.1 Unless agreed otherwise in the Statement of Work, title to and the risk of loss of or damage of any Deliverables shall be transferred to the Customer upon the occurrence of:

17.1.1 Acceptance of Delivery, if such Hardware or Software (other than Software owned by the Supplier or third party) is purchased on a standalone Delivery basis; or

17.1.2 in other cases, Final Acceptance.

17.2 Upon the transfer of title of any Deliverables, the Supplier shall convey to the Customer all rights and title in the Deliverables by appropriate documents with warranty of title free and clear of all liens and encumbrances. The transfer of title of any Deliverables shall not prejudice the Customer’s right to reject or return such Deliverables in accordance with the terms of this Agreement and/or Purchase Order.

# 18. DELAYS AND LIQUIDATED DAMAGES FOR DELAY

18.1 **Delays**

18.1.1 If the Supplier becomes aware that it will not, or is unlikely to achieve any Milestone Date, Delivery Date or Completion Date, it shall promptly notify the Customer in writing and in any event no later than two (2) Business Days after the cause of the delays could reasonably have been known to the Supplier.

18.1.2 The notice shall, as a minimum, identify and provide details (including supporting documents) of:

(a) the cause or causes of the delay;

(b) the expected duration of the delay;

(c) which dates that are or will be affected by the delay;

(d) which other obligations of the Supplier which are or will be impacted by the delay; and

(e) the steps and duration to be taken to remedy the delay.

18.1.3 The Supplier shall, periodically or as and when requested by the Customer, update the Customer of the matters referred to in **Clause 18.1.2**.

18.2 **Liquidated Damages for Delay**

18.2.1 Without prejudice to the Customer’s other rights and remedies under this Agreement and Purchase Order and under the law, if the Supplier fails to meet any Delivery Date or Completion Date (such extended time granted pursuant to **Clause 19**) stipulated in the Statement of Work and/or Purchase Order, the Customer shall be entitled to claim for Liquidated Damages stipulated below, unless a higher percentage, amount and/or limit is stated in the applicable Statement of Work or as otherwise prescribed in the Statement of Work:

*0.5% of the total value of the Purchase Order related to the Deliverables of each day of delayed (or any part thereof) up to a maximum amount of 10% of the total value of the said Purchase Order*.

18.2.2 The payment of Liquidated Damages shall not relieve the Supplier from its obligation to provide and/or deliver the Deliverables in accordance with the terms of this Agreement and the Purchase Order.

18.2.3 The Supplier shall on demand pay such Liquidated Damages to the Customer within fourteen (14) days from the date of demand by the Customer, failing which the Customer shall be entitled, at its discretion, to:

(a) deduct such amounts from any amount due and payable to the Supplier under any Purchase Order; and/or

(b) exercise any other rights and remedies including but not limited to making a call on the Performance Guarantee and/or enforcing the Parent Guarantee.

18.2.4 The Parties acknowledge that Liquidated Damages represent a genuine pre-estimate of the Customer's loss, is in proportion to the Customer’s interest in enforcing performance, and is not imposed on the Supplier as a penalty.

# 19. EXTENSION OF TIME

19.1 The Supplier may submit a written request to the Customer for an extension of any Milestone Dates, Delivery Date or Completion Date for any delays specified under **Clause 19.3** and which is not caused by the Supplier (including any sub-contractors of the Supplier). The decision to grant an extension is at the sole and absolute discretion of the Customer.

19.2 If an extension is granted, the Supplier shall complete the performance under the Purchase Order by the mutually agreed extended completion dates but with no additional costs or expenses becoming due from the Customer to the Supplier.

19.3 The Supplier may only request for an extension of the relevant Milestone Date if it is due to one or more of the following factors only:

19.3.1 Force Majeure Event;

19.3.2 delays proven to be directly attributable to the Customer’s delay in performing its obligations as agreed in the Responsibility Matrix or a breach by the Customer of its obligations under a Purchase Order;

19.3.3 acts or omissions of other persons or contractors employed by the Customer in executing work not forming part of a Purchase Order; and/or

19.3.4 a Change Request issued by the Customer.

19.4 The Supplier’s right to request for an extension of time under **Clause 19.3** is conditional upon the Supplier first:

19.4.1 notifying the Customer in writing that it will not or is unlikely to meet any Milestone Date, Delivery Date or Completion Date in accordance with **Clause 18.1**; and

19.4.2 providing evidence that the delay is attributable to one or more of the factors set out in **Clause 19.3**.

Non-compliance with this **Clause 19.4** shall invalidate the Supplier’s right for any extension of time.

19.5 Notwithstanding anything to the contrary, the Supplier undertakes to use other means to mitigate the effect of the cause that will give rise to the delay.

# 20. ENDEMIC FAILURE

20.1 If an Endemic Failure occurs, the Customer may give notice to the Supplier, with a summary of the Endemic Failure. The Supplier shall provide Customer with a written plan to remedy the Endemic Failure within five (5) days from the date of Customer’s written notice for the Customer’s approval. Notwithstanding anything to the contrary in this **Clause 20**, the Customer may at all times request for the replacement of the Deliverable affected by the Endemic Failure, if the Supplier fails to provide the written plan within the stipulated period or if the Customer does not approve the plan or if the Endemic Failure involves a Severity 1 Defect or if the Supplier fails to remedy the Endemic Failure within the time set out in **Clause 20.3**.

20.2 If the Supplier fails to provide the written plan within five (5) days from the date of the Customer’s written notice or the Customer does not approve the written plan provided by the Supplier, the following shall apply:

20.2.1 without prejudice to other rights and remedies of the Customer, the Supplier shall:

(a) remedy the Endemic Failure so the Deliverables may fully function in accordance with the Specifications and other requirements in the Statement of Work; or

(b) replace the Deliverables subject to Endemic Failure as well as all other Hardware (including Spare Parts) of identical or similar type supplied by the Supplier to the Customer, regardless of whether such other identical or similar Hardware supplied by the Supplier to the Customer, at the time of the relevant replacement, is subject to the same Endemic Failure or not.

20.2.2 Any remedial work to the Deliverables or replacements referred to in **Clause 20.2.1** shall be made with Hardware of new and/or modified design, material and/or workmanship designed for the System and be subject to new Provisional Acceptance Test and new Warranty Periods (irrespective of whether the existing Warranty Period for the affected Deliverables has expired or not); and

20.2.3 If requested by Customer, the Supplier shall and at its own cost, expense and risk, immediately remedy at or collect from the location designated by the Customer all Deliverables affected by the Endemic Failure. If the Supplier does not collect such Deliverables within a reasonable period of time, then the Customer may deliver all or some of the affected Deliverables to the Supplier at the Supplier’s cost, expense and risk.

20.3 Without prejudice to any of the Customer’s rights and remedies under this Agreement, the Purchase Order or at law, the Customer may, by notice to the Supplier, immediately terminate any Purchase Order which is or may be affected by such Endemic Failure if the Supplier has failed to remedy such Endemic Failure within ten (10) days of its receipt of a notice requiring the Supplier to do so.

20.4 This **Clause 20** shall apply in relation to each Deliverable for the licensing period from the date of Acceptance of the Deliverable.

20.5 If the Supplier becomes aware of an Endemic Failure with respect to any of its Hardware and/or Software occurring anywhere in the world and such Hardware and/or Software is or has been supplied to the Customer, the Supplier shall immediately inform the Customer of such event.

# 21. MAINTENANCE AND SUPPORT

21.1 If required by the Customer, the Supplier shall provide maintenance and support in accordance with the terms and conditions of the Maintenance and Support Agreement executed by the Parties.

21.2 The Supplier shall ensure that the maintenance and support shall be made available by the Supplier to the Customer for a minimum period of five (5) years from the Delivery or Commissioning of the Deliverables, as applicable.

# 22. END OF SUPPORT AND END OF LIFE

22.1 In the event that any:

22.1.1 Hardware will be discontinued and/or no longer supplied or offered including due to the end of life of the Hardware;

22.1.2 Software will no longer be supported,

(collectively “**End of Life of the Hardware and Software**”)

the Supplier shall provide written notification to the Customer at least twenty-four (24) months prior to the date of the End of Life of the Hardware and Software Such notice shall state, amongst other things:

(a) the date of the End of Life of the Hardware and/or Software;

(b) details of the new Hardware and/or Software replacing the outgoing Hardware and Software.

22.2 In the event that the Hardware and/or Software (including Hardware and/or Software which has reached end of life) is no longer supported by the Supplier (“**End of Support of the Hardware and/or Software**”), the Supplier shall provide written notification to the Customer at least sixty (60) months prior to the date of the End of Support of the Hardware and/or Software. Such notice shall state, amongst other things, the date of the End of Hardware and/or Software.

22.3 At any time after receiving notification from the Supplier pursuant to **Clause 22.1**, the Supplier acknowledges and agrees that the Customer may request for the Supplier to provide the replacement Hardware to undertake any proof of concept and/or compatibility test and the Supplier agrees to provide reasonable support to the Customer.

# 23. DOCUMENTATION

23.1 The Supplier shall provide to the Customer the complete Documentation relating to the use, operation and maintenance of any Deliverables at its own cost. Such Documentation shall include, where applicable, but not limited to (a) full technical details; (b) electrical protocol; (c) interfaces; (d) drawings and ‘as built’ drawings; (e) descriptions; (f) manuals (including operating manuals); (g) information concerning the Supplier's interpretation of the interfaces; (h) standard recommendations supporting operation and maintenance; (i) compliance table to relevant international Industry Standards; and (j) any other relevant information as agreed in printed or printable form and all instructional and informational aides in any form (including audio, video and text) and on any medium (excluding proprietary information of a third party unless otherwise authorised to disclose), in respect of any Deliverables.

23.2 The Documentation shall be:

23.2.1 in the English language;

23.2.2 user friendly; and

23.2.3 comprehensive and provide detailed description of the format, functions, processes and how any Deliverables is to be used, operated and maintained.

23.3 The Supplier shall provide one (1) hard copy and one (1) soft copy of such Documentation and allow the Customer to make multiple copies of such Documentation for training, operation and maintenance and for any other purpose that may be necessary for the purposes of operating any Network or part of the Network or as may be detailed within this Agreement or in a Purchase Order.

23.4 If any part of the Documentation is incomplete, incorrect or unintelligible, the Party discovering such deficiency shall notify the other Party and the Supplier shall immediately complete or correct such part of the Documentation.

# 24. CHANGE REQUEST

24.1 If the Customer wishes to make any amendment, variation, addition or deletion to the requirements of a Statement of Work and/or Purchase Order (the “**Amendment**”), the Customer shall notify the Supplier in writing specifying in reasonable detail the nature of the Amendment (“**Change Request**”).

24.2 Only to the extent that the Supplier will incur cost, the Supplier shall, as soon as reasonably practicable, submit to the Customer a quotation for such Amendment (“**Quotation***”*) specifying the reasonable changes (if any) which will be required to the Project Schedule, the Implementation Plan, the Acceptance Tests Procedures and Criteria, the relevant Specification, the Statement of Work or any other part of the Purchase Order.

24.3 The Parties shall, within seven (7) days from the date the Customer receives the Quotation (if there is a Quotation) or from the date of the Change Request (if there is no Quotation), meet to discuss the Quotation (if applicable) and any revisions required. Thereafter, the Customer may accept (in which case, any amendments to the Purchase Order is required) or reject the Quotation. If the Change Request is:

24.3.1 accepted, the Change Request shall only take effect on the date the Change Request is executed by both Parties or such other date to be mutually agreed by the Parties; or

24.3.2 rejected, the Change Request shall not take effect but the Parties may choose to further discuss details of the Change Request.

# 25. CLAIMS

25.1 **Submission of Claims**

If the Supplier determines it has a contractual claim in relation to or arising out of a Purchase Order, including payment, extension of time, acceleration, variation or any other claims or disputes between the Parties, the Supplier shall only submit claims which:

25.1.1 are substantiated by accurate written particulars;

25.1.2 have a quantum and have been accurately calculated based on contractual rates or lower basis; and

25.1.3 have not been artificially marked up to include a negotiating margin or other illicit gain.

The Supplier shall ensure that no claim is submitted more than once.

25.2 **Advance Notice of Claim**

25.2.1 If the Supplier intends to make a claim against the Customer, it is a pre-requisite for the Supplier to promptly submit an Advance Notice of Claim within ten (10) Business Days after the Supplier becomes aware or should have reasonably known that an event or series of events will or is likely to give rise to additional or extra costs or expenses or the requirement for an extension of time.

25.2.2 The Advance Notice of Claim shall contain the following details:

(a) the events giving rise to the potential claim along with each event, the respective cause and effect;

(b) particulars which show the heads of and quantum of claim, including all calculations used; and

(c) the clauses under this Agreement and/or the Purchase Order that Supplier is relying on for the consideration of the Customer.

25.3 The Customer shall not be liable to make any payments or grant any extension of time to the Supplier if the Supplier fails to comply with the requirements in this **Clause 25**.

# 26. PROJECT MANAGEMENT

26.1 The Supplier shall appoint a project manager to oversee the supply and/or performance of Deliverables pursuant to each applicable Purchase Order.

26.2 The Supplier shall ensure that the appointed project manager and its Personnel shall comply with the relevant roles and responsibilities including those in the Responsibility Matrix set out in the Statement of Work.

26.3 The Parties shall meet as required under a Purchase Order and if no such frequency is stated in the Purchase Order, as often as is reasonably necessary to facilitate the proper implementation of all Purchase Orders.

26.4 The Supplier shall prepare and provide to the Customer any written progress report specified in this Agreement, Purchase Orders or which are otherwise reasonably required by the Customer in advance of each of the meetings referred to in this **Clause 26**.

26.5 The Supplier shall use its best endeavours to ensure that the operation of the Customer’s Network is not disrupted by the Supplier carrying out its obligations under the Purchase Order save and except for any scheduled disruption agreed with the Customer.

# 27. SUPPLIER PERSONNEL

27.1 **General**

27.1.1 The Supplier shall use such qualified, certified, skilled and experienced personnel and commit such number of Personnel as is necessary to perform its obligations under this Agreement and the Purchase Order.

27.1.2 If the Customer believes that the performance or conduct of any Supplier Personnel is unsatisfactory, in its reasonable discretion, the Customer may notify the Supplier and upon receipt of any such notification, the Supplier shall within five (5) Business Days, take prompt and corrective action at the Supplier’s own cost. If after such five (5) Business Days, the problem is not rectified to the Customer’s reasonable satisfaction, the Supplier shall, as soon as practicable but not later than ten (10) Business Days replace such person with another person reasonably acceptable to the Customer at the Supplier’s own cost.

27.1.3 Notwithstanding **Clause 27.1.2**, if the Customer believes that any of the Supplier Personnel has engaged in improper conduct including without limitation, violations of law or the Customer’s policies (including without limitation the Customer’s code of conduct), upon written notice to the Supplier from the Customer which shall include a description of the improper conduct, such Supplier Personnel shall be immediately removed and shall be replaced with another person reasonably acceptable to the Customer at the Supplier’s own cost.

27.2 **Key Personnel**

The continuity of the Key Personnel shall be maintained by the Supplier throughout a particular project. If for any reason beyond the reasonable control of the Supplier, it becomes necessary to substitute any of the Key Personnel or if the Supplier determines in its reasonable judgement, that it is appropriate to change or substitute any of the Key Personnel, the Supplier is not to remove or assign the Key Personnel without:

27.2.1 providing the Customer with twenty (20) Business Days prior written notice (including identification of Key Personnel, explanation of reassignment or removal, identification of the experience and qualifications of the individual proposed to replace the departing Key Personnel, a plan and schedule showing how the transfer of knowledge between the departing and incoming individual will occur, and how the impact on the work will be minimised); and

27.2.2 receiving the Customer’s written consent, such consent shall not be unreasonably withheld.

27.3 **Replacement**

The Supplier shall, at its own cost and expense, provide a suitable replacement of a Supplier Personnel including its Key Personnel of equivalent or requisite skill, qualifications, capability and experience acceptable to the Customer.

27.4 **Supplier’s Obligations as to its Personnel**

27.4.1 The Supplier is solely and fully responsible for all acts and omission of its Personnel. In addition, the Supplier is solely and exclusively responsible for the payment of salaries, other compensation and other benefits and plans, required by law, to its Personnel and for the payment of any and all federal, state and local taxes, withholding, benefits payments or other payments due on such compensation.

27.4.2 The Supplier shall ensure that its Personnel and sub-contractors:

(a) have the requisite visas, work permits, employment passes, approvals and consents to perform the obligations under this Agreement and the Purchase Order;

(b) have obtained the safety passport issued by the National Institute of Occupational Safety and Health and the relevant competency certificate issued by Energy Commission where such certifications are required for carrying out of the obligations under this Agreement and the Purchase Order.

# 28. RECORD RETENTION

28.1 The Supplier shall, and shall ensure that all its sub-contractors will, keep or cause to be kept, complete, up-to-date and accurate record of all Requisite Records in a secure and suitable facility readily accessible by the Customer and any auditor or regulator until the latest of:

28.1.1 the date which is seven (7) years from the creation of the Requisite Records or the date of the relevant transaction, whichever is later, or such longer period as may be required by Applicable Laws; and

28.1.2 the date that all matters arising from or in connection with a Purchase Order and this Agreement have been finally concluded by agreement of or fully performed by the Parties.

28.2 The Supplier shall give the Customer not less than ninety (90) days’ notice of the Supplier's intention to destroy or otherwise dispose of any Requisite Records which are not required to be kept by it. Such Requisite Records is not to be destroyed unless the Customer has had a reasonable opportunity to recover such Requisite Records and the Customer has not requested that the Requisite Records be delivered to it (together with the retrieval systems).

28.3 The Supplier shall, within ten (10) Business Days from the date of request by the Customer, provide all such Requisite Records as required for verification of compliance with this Agreement or any Purchase Order, as the case may be.

# 29. AUDIT AND INSPECTION

29.1 Notwithstanding anything to the contrary, the Customer or its appointed agent shall, at any time but not more than two (2) times a year, be entitled to audit:

29.1.1 the underlying resources used by the Supplier in performing its obligations under this Agreement and/or any Purchase Order and its compliance with this Agreement and/or Purchase Order;

29.1.2 the unit amounts invoiced to the Customer under any Purchase Order;

29.1.3 the practices, procedures, systems and general controls relating to the projects (including security); and

29.1.4 the procurement and supply chain practices and activities of Supplier to enable the Customer to adhere and comply with the regulatory requirements,

by giving a minimum of ten (10) Business Days written notice and the Supplier shall comply with the reasonable requests to such audits.

29.2 Each Party shall bear its own cost and expenses of the audit required under this **Clause 29** unless the required audit results from a failure by the Supplier of its obligations under a Purchase Order or this Agreement, where in such case:

29.2.1 the costs and expenses associated with the audit is to be borne by the Supplier; and

29.2.2 the audit will be over and above the two (2) audits which the Customer is entitled to in a year**.**

29.3 The Supplier shall facilitate and provide such reasonable assistance to the Customer when conducting the audit including:

29.3.1 granting the Customer and its authorised agent access to each of the data, accounts, records and supporting documents arising from or in connection with this Agreement and any Purchase Order;

29.3.2 granting the Customer and its authorised agent access to the reasonable facilities at any relevant sites of the Supplier at all reasonable times during (and, in emergency, outside) normal working hours; and

29.3.3 permitting the Customer and its authorised agent:

(a) to interview any of the relevant Supplier Personnel;

(b) to review the integrity of the Customer’s Confidential Information;

(c) to make inspections, audits and tests for the purpose of conducting the internal, statutory and regulatory audits and making reports required by any governmental or regulatory authority;

(d) to conduct any risk assessment to assess the possible impact of any Deliverables on the Customer's business; and

(e) to monitor and assess the compliance and performance of the Supplier's other obligations under this Agreement and any Purchase Order.

29.3.4 Without limiting any other right or remedy available to Customer under this Agreement or in law, if an audit identifies any breach by the Supplier which may compromise the Customer or any Customer assets, the Supplier must at its own cost, do all things necessary to remedy that breach within time required by the Customer.

# 30. REPRESENTATIONS AND WARRANTIES

30.1 **Reliance**

30.1.1 The Supplier acknowledges and agrees that:

(a) the Customer has entered into this Agreement;

(b) Statement of Work will be executed and are executed; and

(c) Purchase Orders will be issued and are issued,

in reliance on the representations and warranties set out in this Agreement.

30.1.2 The Supplier acknowledges and agrees that as this Agreement is a framework agreement, additional representations and warranties may be incorporated into the Statement of Work to cater for and address specific requirements of the Customer pursuant to that Statement of Work. Reference to representations and warranties under this Agreement shall also include the additional representations and warranties stipulated in the Statement of Work.

30.2 **Separate, Distinct and Continuing Representation and Warranties**

30.2.1 Each of the representation and warranties are, and shall be construed as, separate and distinct from the other representations and warranties.

30.2.2 The representations and warranties given and undertaken by the Supplier in this Agreement shall be given as at the date of this Agreement and repeated by the Supplier by reference to the facts and circumstances at the time each Purchase Order is placed by the Customer and at the time of Acceptance of the Deliverables.

30.3 **General**

Each Party represents and warrants to the other that:

30.3.1 it is and will remain duly incorporated and validly existing under the laws of its incorporation and has all the necessary powers and authority to carry on its business as presently conducted;

30.3.2 it has and will continue to have at all times the necessary power, authority, licences, permits and consents to execute, deliver and perform its obligations under this Agreement and the Purchase Order and that this Agreement and each Purchase Order to be executed constitutes legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement and the Purchase Order;

30.3.3 the execution and delivery of this Agreement, Statement of Work and the Purchase Order, and the performance by that party of its obligations under it, will not:

(a) result in a breach of any provision of its memorandum or articles or association;

(b) result in a breach of or constitute a default under any instrument or agreement to which it is a party or by which it is bound;

(c) result in a breach of any order, judgement or decree of any court, government body, statutory authority, regulatory body or other government agency to which it is a party or by which it is bound; and/or

(d) result in a breach of Customer’s Business Integrity & Anti-Corruption Policy.

30.4 **Representations and Warranties on Deliverables**

Without limitation to the duration of the Warranty Period, the Supplier represents, warrants and undertakes, in respect of Deliverables, that:

30.4.1 it has good and valid title to the Deliverables and a legally enforceable right and power to grant any title or licence under this Agreement and Purchase Order to the Customer;

30.4.2 it shall deliver to the Customer such good title and licence free of any lien, pledge, encumbrances, mortgage, or any other charge or right whatsoever of any third party;

30.4.3 the Deliverables shall in all respects:

(a) conform to, perform in accordance with, be fit for purpose as described in the Statement of Work and have the features and meet the relevant Specifications stipulated in the Statement of Work;

(b) be approved (including type approved) by the appropriate approvals authority for the telecommunications equipment and other authorities related to other equipment and products that may be supplied from time to time;

(c) comply with the Applicable Laws including those relating to quality assurance, quality of service and the environment;

(d) are suitable for the climate and are able to withstand the climate conditions of the area, region or State at which the Deliverables are installed and/or operating;

(e) meet and comply with Industry Standards; and

(f) the Deliverables are fully compatible, interfaceable, inter-operable and integrable with the Customer’s the Internal & External System (now or in the future) and in this respect, the Supplier shall provide the necessary interface fulfilling the Interface Industry Standards.

30.4.4 All Deliverables supplied to the Customer shall be:

(a) new and unused (not second hand or reconditioned) and the most up to date model and version available on general release to the Supplier’s customer unless otherwise agreed by the Customer;

(b) of good quality, free from defects and deficiencies; and

(c) Date Compliant.

30.4.5 Where there is Software provided by the Supplier:

(a) it has or will acquire good and valid title to the Software and has obtained all third party licenses and consents (including the right to sublicense the same to the Customer) necessary to grant a licence in accordance with this Agreement, the Statement of Work and the Purchase Order, to enable the Customer to use royalty free any relevant third party software modules embodied within or used in connection with the Software and the hardware, and any third party documentation or materials furnished as part of the implementation of the Services without payment by the Customer to any such third party;

(b) the Software (including all modifications, enhancement and customization) do not in any way infringe any third party rights; and

(c) the Software will not contain any Malware.

30.4.6 Where the Supplier is responsible to provide a System and/or perform any Installation, Commissioning and/or Integration Services:

(a) the System, Hardware, Software and Services shall be properly and completely planned, designed, dimensioned, supplied, delivered, Installed, Integrated, optimised, Commissioned, tested, interfaced, interconnected with the Network and Internal & External System, and maintained and supported, in accordance with all of the relevant Specifications, provisions and requirements of the Customer under this Agreement and the Purchase Order;

(b) the System, Hardware, Software and Services shall be in compliance with the System, Hardware, Software and Services warranties in this **Clause 30** and the other warranties stipulated in this Agreement; and

(c) the System, Hardware and Software shall perform and operate together as an integrated System in accordance with the relevant Specifications.

30.4.7 The Supplier represents and warrants to the Customer that:

(a) the Supplier is capable of validly:

(i) making the assignment in **Clause 32.1**; and

(ii) granting all licences that are necessary to meet the obligations in the Purchase Order, and

(b) neither the possession, use, copying, adaptation, authorised development or modification or maintenance of Deliverables, or any part of Deliverables, or the provision of Deliverables by the Supplier to the Customer in accordance with any Purchase Order will infringe the Intellectual Property Rights of any person.

30.5 **Availability**

30.5.1 During a minimum period of [\*] years from the date of the first Final Acceptance of that Deliverables or Acceptance of any new version or generation of Hardware nodes or Hardware units, whichever is later (“**Availability Term**”), the Supplier warrants that the Supplier, subject to **Clause 30.6**, shall make available to the Customer:

(a) Spare Parts that are fully compatible with the System, and

(b) Hardware, Software and Services that will permit normal expansion of the System i.e. permit expansion of existing Hardware and Software for capacity, availability and scalability,

which are have equivalent or better functionality for the System and be provided at reasonable prices at the time of delivery.

30.5.2 The Supplier shall maintain the technical capability and expertise to provide support for the System, Hardware, Software and Services to ensure the correct functioning and inter-operability of the entire or any part of the System, Hardware or Software with the Customer’s Network and Internal & External System and provide support and maintenance services for the Availability Term.

30.5.3 If the Supplier intends to stop manufacturing, after the expiry of the Availability Term, any Spare Parts, equivalent replacement parts or substitute parts, the Supplier shall inform the Customer of its intention in writing at least twelve (12) months in advance.

30.6 **Compatibility Warranty**

The Supplier represents and warrants, during the Availability Term, that any Hardware and/or Software purchased for expansions, enhancements or replacements of the entire or a part of the System shall be fully compatible with the following, without any need for replacement or major corrections or upgrades of the Hardware or Software:

30.6.1 Software licensed and previously licensed by the Customer under this Agreement and Purchase Order provided such Software shall not be older than [0] previous version (“**N-\* version**”) of the latest available major Software Release made available to the market by the Supplier; and

30.6.2 Hardware purchased and previously purchased under this Agreement and Purchase Order provided always that the existing Software in the Hardware shall not be older than N-\* version (“**N-\* Software**”). However, if the Hardware that was previously purchased under this Agreement and Purchase Order is not able to be upgraded to run or host the N-\* Software with full functionality, the Supplier agrees that they will, at its own cost, replace the Hardware to enable the Hardware to run or host the N-\* Software.

Any replacements or corrections or upgrades of the Software necessary shall be at the cost and responsibility of the Supplier.

30.7 **Quality**

The Supplier represents and warrants that the System and the specified parts of the System shall meet all quality parameters (e.g. the >mean time between failure and the unplanned downtime>) specified in the relevant Specification. The Supplier shall, upon the Customer’s request, perform running (once a quarter as a minimum) measurements of the compliance with this warranty and disclose its result to the Customer.

30.8 **Services**

Where Services are provided, the Supplier represents and warrants that:

30.8.1 it is a professional, experienced and skilled expert and possesses the requisite resources, capacity, professional skill and technical expertise to perform its obligations under this Agreement and any Purchase Order, as the case may be, in accordance with the current and future Best Industry Practices;

30.8.2 the Services shall be performed with due care, in a professional manner and in accordance with the services description in the Statement of Work and Best Industry Practices;

30.8.3 take due care as not to cause unreasonable interference with or damage to any existing facilities and/or sites when performing any Services; and

30.8.4 cause as minimal interference as reasonably possible to the Network and the operation of the Network when performing any Service save and except for any scheduled outage or interference as agreed with the Customer.

30.9 **Documentation**

The Supplier represents and warrants that as at the date of delivery of the Documentation, the Documentation provided will be complete and accurate and free from incorrect and/or omitted instructions and references which may affect the performance and/or operation of any Deliverables. The Supplier shall correct and/or replace any such faulty Documentation at no additional cost.

30.10 **Accuracy of Information**

The Supplier represents and warrants that:

(a) all information provided to the Customer shall be true, complete and accurate at all times and the Supplier agrees that the Customer may rely on all such information without having to carry out any independent verification; and/or

(b) it has examined, will examine and become familiar with this Agreement, the relevant Statement of Work and Purchase Order and will obtain all necessary information as to risks, contingencies and all other circumstances that an experienced Supplier would take into account as influencing or affecting the Purchase Order and the Statement of Work. The Customer gives no warranty with respect to the information that it provides either as to its accuracy or sufficiency or as to how the information should be interpreted and the Supplier shall make use of and interpret the information at its own risk and responsibility, as the Customer is relying upon the Supplier as a professional, experienced and skilled expert.

30.11 **Financial Standing**

The Supplier represents and warrants that it is adequately and properly financed to meet all its financial obligations which it may be required to assume under this Agreement and any Purchase Order and it will perform its obligations under this Agreement and the Purchase Order in an expeditious and economical manner.

30.12 **Remedies for breach of Representation and Warranties**

Without prejudice to any other rights and remedies of the Customer, if the System, Hardware or Software (or any part thereof), fails to operate in compliance with the applicable warranty(ies) set out in this Agreement and the Statement of Work, or if there is a breach of any of the warranties, the Customer shall have the right to require the Supplier, at its own cost, to promptly take all reasonable action in order to secure compliance with the said warranties including, but not limited to:

30.12.1 the replacement of the System, Hardware or Software (or additional products and systems) with items conforming to such warranties or to re‑render the relevant Services for the Installation, Integration and Commissioning of the replaced or repaired Deliverable free of charge;

30.12.2 providing workaround or provision, install and integrate additional or replacement Services, Hardware and/or Software at no additional charge; and/or

30.12.3 pay the Customer for any costs which the Customer has to incur, including but not limited to costs of replacing the existing System, Hardware or Software or making alternate arrangements for operations and maintenance of the System, Hardware or Software, due to Supplier’s intention to cease technical support and maintenance prior to the expiry of the Availability Term.

# 31. WARRANTY PERIOD FOR DEFECTS

31.1 Unless otherwise specified in the Statement of Work, the Supplier warrants that all Deliverables shall operate, function and perform in accordance with the relevant Specifications free from any Defects for a period of twenty-four (24) months from:

31.1.1 the date of Acceptance of the Hardware or Software, if no Services are ordered;

31.1.2 the date of Final Acceptance of the System, Hardware and Software, if Services are ordered for the System, Hardware or Software,

as applicable (“**Warranty Period**”).

31.2 **Remedies**

31.2.1 The Supplier shall, at its own cost and expense, execute and complete all works necessary to rectify and remedy any Defect during the Warranty Period.

31.2.2 If any Deliverables fail to so perform or any Defect appears or is detected or discovered or at any time during the Warranty Period, the Supplier shall:

(a) rectify the Defect in accordance with the applicable service level in the Support and Maintenance Agreement; or

(b) in the absence of such Support and Maintenance Agreement, any Defects shall be repaired, corrected or replaced as follows:

*[to insert service levels for the different severity levels]*

failing which, the Customer shall, without prejudice to any of its other rights and remedies, be entitled to replace the affected Deliverable or engage a third party to complete or repair the defective works in accordance with the instructions and/or manual provided by the Supplier third party all of which at the cost and liability of the Supplier.

31.3 **Reporting**

The Supplier must, in respect of each Deliverable, throughout the Warranty Period, provide the Customer with monthly activity reports (in a form approved by the Customer), specifying:

31.3.1 any areas of non-compliance with the warranties notified by the Customer or discovered by the Supplier; and

31.3.2 corrective action, including response and restoration times, taken by the Supplier to remedy each area of non-compliance.

# 32. INTELLECTUAL PROPERTY RIGHTS

32.1 **Ownership**

32.1.1 Intellectual Property Rights in any Deliverables which existed prior to a Purchase Order (to which the Deliverables relate) or which are created outside the scope of this Agreement or that Purchase Order ("**Pre-Existing Works**") belong to the respective Parties (or their Affiliates or third-party licensors).

32.1.2 Intellectual Property Rights in any Deliverables which are specifically created and/or customized for the Customer by the Supplier or its sub-contractors on its behalf (whether alone or jointly with the Customer), pursuant to a Purchase Order shall belong to and be vested in the Customer on its creation without restrictions and conditions unless otherwise agreed by the Parties.

32.1.3 Subject to **Clause 32.1.2**, to the extent any Intellectual Property Rights in the Customised Works vests (either by operation of law or otherwise) in the Supplier or persons acting on behalf of the Supplier, the Supplier shall assign or procure the assignment of the Intellectual Property Rights in the Customised Works to the Customer or such third party as the Customer may designate. The Supplier agrees that it will execute, at its own costs, all documents and do all acts necessary to give effect to the assignment of the Intellectual Property Rights in the Customised Works.

32.2 **Intellectual Property Rights Licence**

In respect of any Intellectual Property Rights in any Deliverables including Intellectual Property Rights owned by the Supplier and/or third parties, the Supplier grants to the Customer a perpetual, irrevocable, fully paid, royalty-free and, non-exclusive licence to the Customer, its Affiliates and its third party suppliers or contractors to possess, use, develop, modify and copy any Deliverables for the business, operations and maintenance purposes of the Customer. For the avoidance of doubt, “develop” and “modify” as used above shall require the prior approval of the Supplier.

32.3 **Infringement**

32.3.1 Without prejudice to the Customer’s other rights and remedies under this Agreement, the Purchase Order or at law, the Supplier shall fully indemnify, defend and hold harmless the Customer from and against any and all damages, losses, liabilities, judgement, settlements, interest, awards, costs and/or expenses (“**Losses**”) suffered or incurred by the Customer arising out of or relating to any lawsuits, claim, threat, actions, proceedings or demands (“**Action**”) by any third party to the extent that such Losses arise from any allegation in such Action that:

(a) the possession, use, copying, adaptation, development (authorised by the Supplier), modification (authorised by the Supplier) and/or maintenance of the Deliverables; and/or

(b) the provision of the Deliverables;

or part thereof infringes the Intellectual Property of any third party (“**IP Infringement**”) provided that the Customer:

(i) shall not have done, permitted or suffered to be done anything which may have been or become an infringement of Intellectual Property namely:

(A) unauthorized modification or development to the Deliverables;

(B) improper use and operation of the System which is not in accordance with its user manual provided to the Customer; or

(C) the failure of Customer to install or have installed changes, revisions or updates as instructed by the Supplier if such would have made the works non-infringing provided always that:

(1) such changes, revisions or updates shall not result in the Deliverables failing to meet the agreed Specifications and the Statement of Work; and

(2) the Supplier has already provided no less than thirty (30) days’ notice and the Customer has had more than ample time to effect such changes, revisions or updates. Such changes revisions or update shall be offered at no cost to Customer; or

(ii) has given written notice to the Supplier of any claim of IP Infringement upon or after becoming aware of the same detailing where possible the nature of the alleged infringement;

(iii) allows the Supplier or its legal counsel, at its own cost and expense, to conduct all negotiations and proceedings and have control of the defence provided that:

(A) the Customer shall have the right at its own expense to enter appearance or defence upon or after receipt of any claim and/or suits and to monitor the proceedings; and

(B) any matter, decision, action or settlement which:

(1) has cost implications on the Customer;

(2) which would result in a waiver of the Customer’s legal rights and remedies or would restrict the Customer from exercising its legal rights and remedies against the claimant; and/or

(3) which would involve or result in the Customer admitting a breach, infringement or guilt,

the Supplier shall first obtain the written consent of the Customer; and

(iv) provide the Supplier with such reasonable assistance as is required by the Supplier at the Supplier’s cost and expense; and

(v) the Customer may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing provided that such participation and observation does not interfere with the Supplier’s defence of the Action subject to **sub-paragraph (iii)** above.

32.3.2 Where Deliverable’s or any part thereof is or in the Supplier’s opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third party Intellectual Property, or the Customer’s use or continued use and/or operation of the Deliverables is enjoined or threatened to be enjoined, the Supplier may at its expense:

(a) procure for the Customer the right to continue using, copying (where it has been agreed in advance), adapting, developing, modifying or maintaining the Deliverables (or any part thereof) in accordance with the terms of the Purchase Order;

(b) modify the Deliverables so that it ceases to be infringing;

(c) replace at its own cost and expense the Deliverables with non-infringing alternatives; or

(d) pay to the Customer such costs of modifying or replacing the Deliverables which the Customer incurs in the course of procuring the non-infringing alternatives;

provided that if the Supplier modifies or replaces any Deliverables, the modified or replacement Deliverables must comply with all the relevant terms in this Agreement and of the Purchase Order and the Customer shall have the same rights in respect thereof.

32.3.3 It is not necessary for the Customer to incur expense or make payment before enforcing the indemnity in this **Clause 32**.

32.3.4 If the Supplier fails to comply with **Clause 32.3.2** within thirty (30) days of its receipt of notice from the Customer that an IP Infringement claim has been made or is in the Supplier's reasonable opinion is likely to be made, the Customer shall be entitled to terminate the Purchase Order and/or this Agreement immediately in accordance with **Clauses 33** to which such IP Infringement claim relates by notice to the Supplier.

# 33. TERM AND TERMINATION

33.1 **Term of this Agreement**

33.1.1 This Agreement shall come into effect on the date of this Agreement and shall remain in full force and effect for a period of [five (5)] years unless earlier terminated in accordance with this Agreement.

33.1.2 Notwithstanding the termination or expiry of this Agreement and/or Statement of Work, the terms of this Agreement and/or Statement of Work shall continue to apply to Purchase Orders which are still subsisting after the termination or expiry of this Agreement and/or Statement of Work until the Purchase Order is completed or earlier terminated.

33.2 **Term of Purchase Order**

The term of a Purchase Order shall commence from:

33.2.1 the commencement date stated in the confirmed Purchase Order; or

33.2.2 in its absence, the date the Purchase Order is confirmed by the Supplier,

and shall continue until all the obligations of the Parties have been fully performed, unless terminated at an earlier date in accordance with this Agreement.

33.3 **Termination by the Customer for Cause**

Without prejudice to any other rights of the Customer under this Agreement, the Purchase Order or at law, this Agreement, any Statement of Work and/or any of the Purchase Order, as the case may be, may forthwith be terminated by the Customer by giving written notice to the Supplier where:

33.3.1 the Supplier materially breaches any warranty, representation, term and condition of this Agreement, the Statement of Work and/or the Purchase Order, as the case may be, (other than a breach referred to in **Clause 33.3.10** and **Clause 33.3.11**) and such breach is incapable of being remedied or where capable of remedy, is not remedied within thirty (30) days of receipt by the Supplier of a notice in writing from the Customer specifying the nature of the breach unless otherwise agreed in writing by the non-defaulting Party. For the avoidance of doubt, a breach pursuant to **Clause 15.2.3**, **Clause 21.2** and **Clause 32.3.4** shall not be regarded as a breach which is capable of remedy; or

33.3.2 the Supplier fails to perform its obligations strictly in accordance with the Milestones applicable to a Purchase Order unless an extension of time is granted in accordance with this Agreement; or

33.3.3 the Supplier fails to perform its obligations strictly in accordance with the Specifications of a Purchase Order; or

33.3.4 an order is made or an effective resolution is passed for the reconstruction and amalgamation of the Supplier under section 366 to 368 of the Companies Act 2016 or any other similar action or proceeding under any other law and the order or resolution is not withdrawn, revoked or annulled within a period of forty-five (45) days from the date of the order or resolution; or

33.3.5 an order is made or an effective resolution is passed for winding up or dissolution of the Supplier and the order or resolution is not withdrawn, revoked or annulled within a period of forty-five (45) days from the date of the order or resolution; or

33.3.6 a receiver, receiver and manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Supplier and such appointment is not withdrawn, revoked or annulled within a period of forty-five (45) days from the date of such appointment; or

33.3.7 a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Supplier and such action is not withdrawn, invalidated or reversed within a period of forty-five (45) days from the date of commencement of such action; or

33.3.8 the Supplier ceases its business or threaten to cease its business; or

33.3.9 there is a change of Control of the Supplier which change may materially affect the Customer’s interest or may materially prejudice the interest of the Customer; or

33.3.10 the Supplier is in breach of its anti-bribery and corruption obligations under **Clause 40**; or

33.3.11 the Supplier is in breach of its data security and protection under **Clause 38** and/or personal data protection obligations under **Clause 39**; or

33.3.12 the Customer suffers a Loss of Licence.

The Supplier shall notify the Customer immediately upon occurrence of any of the events referred to in **Clauses 33.3.4** to **Clause 33.3.11**.

33.4 **Termination by the Supplier for Cause**

Without prejudice to any other rights of the Supplier under this Agreement, the Purchase Order or at law, this Agreement and/or any of the Purchase Order, as the case may be, may forthwith be terminated by the Supplier by giving written notice to the Customer where:

33.4.1 the Customer fails to pay the Supplier an undisputed sum under a Purchase Order in accordance with the provisions of the Purchase Order and the Customer fails to remedy such breach within thirty (30) days from the date of written notice requiring the Customer to do so from the Supplier; or

33.4.2 an order is made or an effective resolution is passed for the reconstruction and amalgamation of the Customer under section 366 to 368 of the Companies Act 2016 or any other similar action or proceeding under any other law and the order or resolution is not withdrawn, revoked or annulled within a period of forty-five (45) days from the date of the order or resolution; or

33.4.3 an order is made or an effective resolution is passed for winding up or dissolution of the Customer and the order or resolution is not withdrawn, revoked or annulled within a period of forty-five (45) days from the date of the order or resolution; or

33.4.4 a receiver, receiver and manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Customer and such appointment is not withdrawn, revoked or annulled within a period of forty-five (45) days from the date of such appointment; or

33.4.5 a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Customer and such action is not withdrawn, invalidated or reversed within a period of forty-five (45) days from the date of commencement of such action; or

33.4.6 the Customer ceases its business or threaten to cease its business.

33.5 **Termination for Convenience**

The Customer may terminate this Agreement, any Statement of Work and/or any Purchase Order for convenience, without cause, by giving at least seven (7) days prior written notice to the Supplier.

# 34. CONSEQUENCES OF TERMINATION

34.1 **Termination of this Agreement**

Upon receipt of a termination notice to terminate this Agreement pursuant to **Clause 33.3** or **Clause 33.5** by the Customer or **Clause 33.4** by the Supplier, the Supplier shall:

34.1.1 with respect to Confidential Information, deal with the Confidential Information in accordance with **Clause 37.6**; and

34.1.2 with respect to Customer Data, cease using the Customer Data and shall:

(a) provide and deliver to the Customer with a complete and uncorrupted version of the Customer Data in electronic form in a format and on media agreed with the Customer;

(b) to return or permanently destroy all Customer Data in its possession or control in the same manner stated in **Clause 37.6**;

(c) if required, the Supplier shall grant access to the Customer to visit the site where the Customer Data is stored for purposes of verification that the Customer Data has been destroyed.

34.2 **Termination of a Purchase Order**

Upon receipt of a termination notice to terminate any or all Purchase Order pursuant to **Clause 33.3** or **Clause 33.5** by the Customer or **Clause 33.4** by the Supplier:

34.2.1 in the case of termination for cause by the Customer, the Customer has the right to accept all or any part of the Deliverables delivered at the date of termination, and the Supplier shall be paid for the Deliverables accepted by the Customer based on the relevant Purchase Order. The Customer may return any Deliverables that has not been accepted by the Customer as at the date of termination to the Supplier, and the Supplier shall repay any and all amounts paid for the returned Deliverables;

34.2.2 where the Deliverables has not been delivered and the Customer has paid in advance, the Supplier shall refund to the Customer all Charges it has paid in advance in respect of Deliverables not delivered or not performed by the Supplier as at the date of termination under the terminated Purchase Order;

34.2.3 the Supplier shall discontinue its performance of its obligations under the terminated Purchase Order except for those part of the works or services as the Customer may instruct the Supplier to protect, making safe or tidying up such part of the works or services as may already have been executed;

34.2.4 the Supplier shall take immediate steps to assist the Customer to ensure a smooth transition if a third party has been appointed to replace the Supplier in the performance of the obligations under the terminated Purchase Order;

34.2.5 in the case of a termination for convenience by the Customer, the Customer shall upon verification pay on a quantum merit basis, where applicable, to the Supplier the reasonable costs (substantiated by documentary evidence) incurred by the Supplier up to the date of termination. The Supplier shall use its best efforts to mitigate its losses and expenses and shall re-deploy any work-in progress or finished articles if so requested by the Customer. Any Deliverables so paid for shall become the property of the Customer 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 the Customer; and

34.2.6 in the case of a termination by the Supplier for cause, the Customer shall pay the Supplier the amounts owing to the Supplier for already delivered Deliverables and already performed Services in accordance with the Purchase Order at the date of termination.

34.3 **Loss of Licence**

34.3.1 If this Agreement and/or any Purchase Order is terminated as a result of a Loss of Licence by the Customer due to the Supplier’s breach or for reasons within the Supplier’s control, the Customer shall have the right to, in addition to any other remedies available to the Customer, return the Deliverables to the Supplier in which case the Supplier shall refund any and all amounts paid for Deliverables. The Customer shall also in such a case, without liability to the Supplier, be relieved from any and all of its purchase and license commitment in relation to all Deliverables not yet delivered, and all Services not yet performed, at the date of termination.

34.3.2 If this Agreement and/or any Purchase Order is terminated as a result of a Loss of Licence by the Customer, for reasons within the Customer’s control, the Customer shall pay to the Supplier as a sole and exclusive remedy and compensation (after taking into account amounts previously paid under the Purchase Order(s), as relevant):

(a) the relevant part of the Purchase Order Price related to such parts of Deliverables that are delivered at the date of termination;

(b) the relevant part of the Purchase Order Price related to such parts of the Services that are performed at the date of termination;

(c) a sum corresponding to reasonable direct and evidenced direct third party termination costs and direct damages incurred by the Supplier as a result of the termination of the Purchase Order(s); and

(d) the Customer shall without liability to the Supplier, be relieved from any and all of its purchase and license commitment in relation to all Deliverables not yet delivered, and all Services not yet performed, at the date of termination.

The Supplier shall (i) take all reasonable measures in order to find (an) alternative purchaser(s) to the Deliverables, (ii) perform good faith negotiations with the Customer regarding a possible buy-back of the Deliverables, and (iii) otherwise take all reasonable measures in order to minimise any and all direct third party termination costs and direct damages associated with the termination.

34.4 **The Effects of Termination**

34.4.1 Notwithstanding the termination or expiry of this Agreement, the terms of this Agreement shall continue to apply to Purchase Orders which are still subsisting after termination or expiry of this Agreement until the Purchase Order is completed or earlier terminated.

34.4.2 Notwithstanding the termination or expiry of a Statement of Work, the terms of a Statement of Work shall continue to apply to any subsisting Purchase Orders, which relates to that Statement of Work, until such Purchase Orders are completed or earlier terminated.

34.4.3 If a Party terminates a Purchase Order due to a breach by the other Party of any term and condition under the said Purchase Order:

(a) that Party shall also be entitled to terminate the Statement of Work to which such Purchase Order relates; and

(b) where the breach by the other Party only relates to a particular Purchase Order, then the right to terminate shall only be in respect of that Purchase Order.

The termination of that Purchase Order shall not cause this Agreement, or any other Purchase Order to terminate automatically. As such, this Agreement, and all other Purchase Orders shall remain in force unless and until they are terminated or expire in accordance with their own terms.

34.5 For the avoidance of doubt, the expiry or termination of this Agreement, any Statement of Work and/or any Purchase Order shall not operate as a waiver of any breach by either Party of any provisions under this Agreement, any Statement of Work and/or any Purchase Order, and is also without prejudice to any accrued rights, liabilities or obligations of the respective Parties including the right of indemnities

# 35. LIMITATION OF LIABILITY

35.1 Subject to **Clause 35.3**, neither Party will be liable, whether for negligence, breach of contract, tort, strict liability or otherwise and whether or not reasonably or actually possible to contemplate, for any indirect, incidental or consequential loss or damage.

35.2 Subject to **Clause 35.3** and **Clause 35.4**, the maximum liability of any Party for damages and losses arising under or in connection with this Agreement and all Purchase Order regardless of the form of action (whether in contract, tort or otherwise) shall:

35.2.1 for the Customer be capped at [100%] of the total value of all Purchase Orders; and

35.2.2 for the Supplier be capped at [200%] of the total value of all Purchase Orders.

35.3 The exclusion under **Clause 35.1** and the limitation of liability under **Clause 35.2** shall not apply to or restrict or limit any Party’s liabilities in the following claim(s):

35.3.1 any damages for personal or bodily injury (including death) caused by that Party;

35.3.2 damage to real property and tangible personal property caused by that Party;

35.3.3 losses caused by wilful misconduct, fraud or misrepresentation;

35.3.4 losses caused by the infringement of Intellectual Property Rights;

35.3.5 breach of any anti-bribery provisions under **Clause 40** (including non-compliance with Anti-Bribery and Corruption Laws and/or Customer’s Business Integrity & Anti-Corruption Policy);

35.3.6 breach of data security and protection obligations under **Clause 38** or personal data protection under **Clause 39**; and

35.3.7 breach of confidentiality obligations under **Clause 37**;

35.3.8 under any indemnity provided by that Party in respect of any of the matters set out in **Clauses 35.3.1** to **Clause 35.3.7**.

35.4 Any Liquidated Damages incurred under this Agreement and/or a Purchase Order shall be outside the liability caps set out in **Clause 35.2** but shall be subject to the separate limitations agreed pursuant to **Clause 18**.

35.5 A Party suffering a loss or damage shall always have a duty to reasonably mitigate such loss or damage. Any claim mentioned under this **Clause 35** by a Party shall not be used to limit or restrict the rights available to the Parties to claim under this Agreement and/or Purchase Order.

35.6 Nothing in this Agreement or Purchase Order shall exclude or limit a Party’s liability where such exclusion or limitation is precluded by law.

# 36. INDEMNITIES

36.1 Subject to the provisions of **Clause 35**, the Supplier shall fully indemnify the Customer for all costs, losses, claims, damages, expenses, penalties, fines, actions, demands, suits and/or proceedings incurred or suffered by the Customer which arises out of or in connection with any of the following:

36.1.1 any failure to deliver, supply and perform any Deliverables in accordance with the terms of this Agreement and/or any Purchase Order;

36.1.2 any breach of any terms and conditions of the licence by the Customer which results from the Supplier’s breach of its obligations under this Agreement and/or any Purchase Order;

36.1.3 a revocation, suspension, withdrawal or termination of Licence or a right to exercise its Licence by the relevant competent licensing authority as a result of a breach or negligence by the Supplier or for reasons within the Supplier’s control (“**Loss of Licence**”);

36.1.4 any wilful misconduct, negligence (breach of contract not necessarily to be construed as a negligent act), fraud, unlawful act or omission on the part of the Supplier or any Supplier Personnel;

36.1.5 any injury or death of any person caused by the Supplier or any Supplier Personnel in the course of performing the Supplier’s obligations or other duties under this Agreement and/or any Purchase Order;

36.1.6 any act or omission of the Supplier or any Supplier Personnel in connection with this Agreement and/or any Purchase Order resulting in or contributing to loss of or damage to the property of the Customer or any third party;

36.1.7 the breach by the Supplier of confidentiality obligations under **Clause 37**;

36.1.8 the breach by the Supplier of data security and protection obligations under **Clause 38**;

36.1.9 the breach by the Supplier of its personal data protection obligations under **Clause 39**;

36.1.10 the breach by the Supplier of its anti-bribery and corruption obligations **Clause 40** and/or non-compliance with Anti-Bribery and/or Corruption Laws and/or Customer’s Business Integrity & Anti-Corruption Policy;

36.1.11 any infringement of Intellectual Property Rights; or

36.1.12 any claims, actions, demands, suits or proceedings brought against the Customer by the Supplier’s sub-contractor engaged by the Supplier for this Agreement and Purchase Orders for any non-payment by the Supplier.

36.2 If any claim shall be brought or asserted against the indemnified Party with respect to which an indemnity is provided by the indemnifying Party under **Clause 36.1** the indemnified Party shall notify the indemnifying Party in writing as soon as practicable.

36.3 The indemnities contained in this **Clause 36** and other parts of this Agreement are absolute and unconditional, and are continuing obligations of the indemnifying Party, separate and independent from its other obligations and survive the termination or expiry of this Agreement and/or Purchase Order.

# 37. CONFIDENTIALITY

37.1 All Confidential Information disclosed or communicated by one Party to the other Party or obtained by one Party from the other Party in connection with this Agreement and Purchase Order including but not limited to the business and operations of a Party and the terms of this Agreement and Purchase Orders shall be treated as Confidential Information unless the information:-

37.1.1 is or becomes publicly available through no fault of the Receiving Party;

37.1.2 which the Receiving Party can prove was in its possession or known to it prior to its receipt from the Disclosing Party;

37.1.3 is or was rightfully received by the Receiving Party from a third party without a duty of confidentiality being owed by the Receiving Party to the third party, except where the Receiving Party has knowledge that the third party has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party; or

37.1.4 independently developed by the Receiving Party without the use of the Confidential Information.

37.2 Each Party’s Confidential Information shall be held in strict confidence by the other Party, using no lesser security measures and degree of care as it uses to protect its own Confidential Information. In any event, the security measures and the degree of care it uses shall, as a minimum, comply with the standards imposed by the Applicable Laws. The Receiving Party shall further ensure that the Confidential Information is secured from unauthorised access from internal and external parties and that all Confidential Information used, stored and/or processed shall be free from virus, malware or other malicious codes.

37.3 No Party shall publicise or announce the execution or existence of this Agreement and Purchase Order except where its disclosure becomes mandatory pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of enforcing its rights and/or court or arbitral proceedings under this Agreement and/or Purchase Order.

37.4 The Confidential Information shall not be used, copied, reproduced, distributed or disclosed by the Receiving Party for any purpose except that:

37.4.1 it may be disclosed to its employees or sub-contractors strictly on a need to know basis to implement or perform this Agreement and/or Purchase Orders only provided its employees and sub-contractors is subject to and maintains the confidentiality obligation under this Agreement; and/or

37.4.2 its disclosure becomes mandatory pursuant to any laws or any acts of authority or rules of any stock exchange;

37.4.3 is required to be disclosed for the purpose of that Party’s enforcement of its rights or for the purpose of any arbitral or judicial proceedings under this Agreement or a Purchase Order;

37.4.4 is required to be disclosed to a Party’s professional advisers, lawyers, auditors and insurers, for the purpose of providing services to that Party provided that in each case such persons are informed of the confidential nature of the information and agree to keep the information confidential except to the extent the information is required by law, rule or requirement of any regulatory authority which it is bound to comply; or

37.4.5 in the case of the Customer only, is disclosed to any existing and potential investor, lender, financier and their respective advisors for investment and/or fund raising purposes.

37.5 Where the Receiving Party is required to disclose any Confidential Information pursuant to any laws or any acts of authority or rules of any stock exchange, the Receiving Party:

37.5.1 shall where practicable and lawful give twenty-four (24) hours’ notice to the Disclosing Party that it is required to disclose the Confidential Information so that the Disclosing Party has an opportunity to protect the confidentiality of its Confidential Information; and

37.5.2 provides the Disclosing Party with a copy of the Confidential Information that the Receiving Party is to disclose.

37.6 Upon the expiry or termination of this Agreement, the Receiving Party shall within seven (7) days return to the Disclosing Party or, where instructed, destroy Confidential Information of the Disclosing Party, at its own cost and immediately cease using all such Confidential Information. Where required by the Disclosing Party, the Receiving Party shall provide to the Disclosing Party a written undertaking confirming that it has fully complied with the requirements of this **Clause 37.6** and that it is not in possession or control of any of the Disclosing Party’s Confidential Information.

37.7 The Receiving Party shall ensure that each of its personnel strictly complies with the obligations under this **Clause 37**.

37.8 The obligations of the Receiving Party in this **Clause** **37** shall survive termination or expiry of this Agreement for a period of five (5) years.

# 38. DATA SECURITY AND PROTECTION

38.1 The purpose of this clause is to set out the Supplier’s obligations in respect of Customer Data.

38.2 The Supplier shall:

38.2.1 comply with all applicable data protection laws, policies, guidelines and obligations in relation to storage and transfer of Customer Data outside the country in which the Customer carries out its business;

38.2.2 not transfer or allow access to Customer Data outside of the country in which the Customer carries out its business without obtaining the prior written consent of the Customer. The Customer may withhold its consent or may provide consent with conditions with which the Supplier shall comply prior to transferring or allowing access to Customer Data outside of the of the country in which the Customer carries out its business;

38.2.3 do all things that a reasonable and prudent entity would do to ensure that all Customer Data is protected at all times from unauthorized access, processing, transfer or use by a third party or misuse, damage or destruction by any person;

38.2.4 provide, implement and apply protective and security policies, processes, controls and measures for Customer Data that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorized access to, processing, transfer or use, misuse or loss of, damage or destruction of the Customer Data;

38.2.5 comply with all information technology, security, access and usage policies, regulations, procedures or directions as are specified in the Agreement or notified by the Supplier from time to time; and

38.2.6 apply security procedures, measures and controls to guard against the misuse, loss, damage, destruction, corruption or alteration of the Customer Data in the possession or control of or accessed by the Supplier or its Personnel.

38.3 If the Supplier becomes aware of any actual or suspected:

38.3.1 breach of any of **Clause 38.2** or breach of any Applicable laws by the Supplier (“**Breach**”);

38.3.2 action taken through the use of computer networks that attempts to access or result in an actual or potentially adverse effect on the Supplier’s information system and/or Customer Data residing on that system (“**Cyber Incident**”); and/or

38.3.3 any other unauthorized access or use by a third party or misuse, damage or destruction by any person (“**Other Incident**”),

the Supplier must:

(a) notify the Customer in writing immediately (and no longer than six (6) hours after becoming aware of the Breach, Cyber Incident and Other Incident);

(b) provide sufficient information and assistance to allow the Customer to meet its respective obligations to report the Breach, Cyber Incident or other Incident to the relevant authorities or inform the customers under the applicable privacy or data protection and other laws;

(c) co-operate with the Customer and the relevant authorities to take all reasonable steps to assist in the investigation, mitigation and remediation of the Breach, Cyber Incident or Other Incident; and

(d) comply with any directions issued by the Customer in connection with the Breach, Cyber Incident or Other Incident.

38.4 The Supplier must, if specified in the Agreement, take out and maintain insurance to protect against the risks of a Cyber Incident, and comply with the provisions of **Clause 38** in respect of the insurance.

38.5 The obligations of the Supplier under **Clause 38** shall survive the termination or expiry of this Agreement and/or Purchase Order.

# 39. PERSONAL DATA PROTECTION

39.1 In the event the Supplier receives any Personal Data from the Customer pursuant to this Agreement and/or Purchase Order, the Supplier shall ensure that it fully complies with the provisions of the Personal Data Protection Act 2010 (“**PDPA**”) and only deals with such Personal Data within the scope permitted by Customer to fulfil its duties and obligations provided under this Agreement.

39.2 The Supplier irrevocably and unconditionally represents and warrants to the Customer that it has sufficient technical and organizational security measures (not limited to security access policies, backups and anti-virus and anti-malware software) in place for the purpose of protecting access to Personal Data or systems or databases containing Personal Data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction, having regard to:-

39.2.1 the nature of the Personal Data and the harm that would result from such loss, misuse, modification, unauthorized access or disclosure, alteration or destruction;

39.2.2 the place or location where it is stored;

39.2.3 any security measures incorporated into equipment storing the Personal Data; and

39.2.4 the measures taken for ensuring the secure transfer of the Personal Data.

39.3 The Supplier shall not, and shall ensure that the Supplier’s Personnel shall not, do anything in relation to any Personal Data which may cause the Customer to be in breach under the PDPA.

39.4 The Supplier shall allow reasonable access by the Customer to such information by way of audit or otherwise as is necessary to ensure that the Supplier complied with **Clause 39** and the PDPA as a whole. Such access includes allowing the Customer and/or its Personnel to inspect and audit the Supplier data processing activities (and/or those of the Supplier’s Personnel Supplier’s Affiliates or sub-suppliers) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this **Clause 39** and the PDPA.

39.5 The Supplier shall not disclose the Personal Data to any Affiliates or sub-Suppliers in any circumstances other than with the written consent of Customer. Where such consent is given by Customer, the Supplier shall take all reasonable steps to ensure that the Affiliates or sub-Suppliers comply with the requirements of this Agreement and PDPA.

39.6 The Supplier shall return or destroy all Personal Data as directed by the Customer, upon expiry or termination of this Agreement.

39.7 The Supplier shall comply with Data Processing requirements and provisions set out in Schedule 5 of this Agreement (If applicable).

39.8 The obligations of the Supplier under **Clause 39** shall survive the termination and/or expiry of this Agreement.

# 40. ANTI-BRIBERY AND ANTI-CORRUPTION

40.1 The Supplier agrees that, in connection with the Agreement and each Purchase Order:

40.1.1 it shall strictly comply with all laws and regulations relating to anti-bribery and corruption including but not limited to the Malaysian Anti-Corruption Commission Act 2009 (“**Anti-Bribery and Corruption Laws**”);

40.1.2 it has read, understands and agrees at all times during the term of the Agreement to comply with the Customer’s Business Integrity & Anti-Corruption Policy as set out in **Schedule 3**;

40.1.3 it shall cause its authorized representative to execute Customer’s Business Integrity & Anti-Corruption Declaration form as requested by the Customer and inform all its employees, representatives, personnel, subcontractors, consultants and agent(s) (“**Representatives**”) who will work on the Agreement of the requirements of Customer’s Business Integrity & Anti-Corruption Policy; and

40.1.4 it shall take all measures to prevent corrupt practices, unfair means and illegal activities at all times throughout the term of the Agreement and each Purchase Order, including maintain accurate books, records and accounts related to its activities and internal controls.

40.2 In the event the Customer has reasonable grounds to suspect or determines that there has been a breach of the provisions of this clause herein by the Supplier, such a breach shall be deemed a material breach of this Agreement, and the Customer shall have the right to suspend payment(s) or to immediately terminate this Agreement.

40.3 The Supplier agrees that any non-compliance with Anti-Bribery and Corruption Laws or Customer’s Business Integrity & Anti-Corruption Policy is a ground for the Customer to forthwith terminate the Agreement.

# 41. COMPLIANCE WITH LAW

41.1 The Parties agree that that they will comply with all Applicable Laws in the performance of its obligations under this Agreement and any Purchase Order including but not limited to environmental laws and health and safety laws.

41.2 The Supplier shall ensure that all Deliverables and its Supplier Personnel shall comply with all Applicable Laws and shall obtain from competent Authorities all necessary permits, licences, visas and authorisations required to perform its obligations in this Agreement.

# 42. BUSINESS CONTINUITY PLAN

42.1 The Supplier shall, for the purposes of the Customer’s projects under this Agreement and Purchase Orders, maintain a Business Continuity Plan and a level of disaster recovery preparedness in accordance with Best Industry Practice in relation to its key production facilities and in respect of the operation of its business.

42.2 Where required by the Customer, the Supplier must within the timeframe specified by the Customer, develop and provide a Business Continuity Plan to the Customer for the Customer’s approval. The Supplier must make any changes to the Business Continuity Plan as required by the Customer. The Business Continuity Plan will not be implemented until it has been approved by the Customer in writing, and will be binding on the Parties following such approval.

42.3 The Business Continuity Plan must specify the processes and agreed time frames for the restoration of the project to the Customer. The Customer may from time to time specify the priority order in which it requires for a particular project to be restored in the event of a disaster recovery event.

# 43. INSURANCE

43.1The Supplier shall procure and maintain the following insurances applicable to its Personnel and/or Deliverables with respect to and for the duration of this Agreement and/or any Purchase Order below:

(a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees employed on or in connection with the work covered by this Agreement and/or their dependants;

(b) Comprehensive General Liability Insurance or Public Liability Insurance of an amount stated in the Statement of Work which shall apply to any one claim or series of claims arising out of an accident or occurrence in connection with this Agreement resulting in bodily injury and/or personal injury including death and property damage of the Customer which shall arise out of or in consequence of any acts or omission of the Supplier;

(c) All Risk Insurance of an amount stated in the Statement of Work which shall apply to any one claim or series of claims arising out of an accident or occurrence of fire, flood, lightning, vandalism, malicious mischief and all perils customarily covered under a standard all risk coverage policy against all or any of such loss or damage in connection with this Agreement; and/or

(d) Such other policies of insurance as the Customer may instruct and/or it deems appropriate in respect of the obligations required by the Supplier under this Agreement, with an insurer or insurers with an AM Best Rating A- (A minus) or better as may be approved by the Customer.

43.2 The Supplier shall ensure that any subcontractors it engages for the purpose of its obligations under any Purchase Order and Agreement shall also effect and maintain the same insurance in **Clause 43.1**.

43.3 The Supplier shall within thirty (30) days of the date of this Agreement, produce such evidence of the existence of the above-mentioned insurance policies to the satisfaction of the Customer. Should the Supplier fail to provide such satisfactory evidence pursuant to **Clause 43**, the Customer may arrange its own appropriate insurance cover and all premium payable and/or paid by the Customer to effect such insurance shall be recoverable from the Supplier as a debt due to the Customer.

43.4 The effecting of the insurances shall not in any way affect the liability or obligations of the Supplier under any Purchase Order or this Agreement or at law.

# 44. FORCE MAJEURE

44.1 In this **Clause 44**, a "Force Majeure Event" means, in relation to any Party, any act, event or circumstance including but not limited to, acts of God, war (whether declared or not), insurrections, or national emergency, sabotage, riot, natural disaster, failure of public infrastructure (such as power and telecommunications networks), or any governmental act or omission, the cause of which is not of such Party's making nor within that Party's reasonable control, which are not reasonably foreseeable and could not, taking into account the last sentence below in this **Clause 44.1**, have been guarded or avoided through the exercise of reasonable precautions or actions against or such occurrence which have not been predisposed in the country of the Customer provided always that:

44.1.1 lack of funds shall not be interpreted as an act, event or circumstance which is not of a Party’s making nor within a Party’s reasonable control;

44.1.2 the effects of a Force Majeure Event which could have been avoided through the proper operation of the Business Continuity Plan shall not be interpreted as an act, event or circumstance which is not of the Supplier’s making nor within the Supplier’s reasonable control; and

44.1.3 the Force Majeure Event shall exclude a mechanical or electrical breakdown or failure of equipment, strikes, lockouts, industrial or labour disputes, work bans, blockades or picketing which does not affect the relevant industry or a substantial portion of it, failure of a sub-contractor or third party supplier to supply goods or services to the Supplier, a shortage of labour or materials unless such failure is as a result of an event set out in **Clause 44.1**;

The Supplier shall take all necessary action and steps that are commercially reasonable to ensure that it is able to supply and perform the Deliverables in view of the political, social and economical environment in the country of the Customer.

44.2If a Party is unable to perform any obligation under this Agreement or a Purchase Order by reason of a Force Majeure Event and the Affected Party:

(a) gives the other Party to which the obligation is owed prompt notice in writing of the Force Majeure Event with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform; and

(b) shall continue to take all actions within its power to comply as fully as possible with its obligations under this Agreement and the Purchase Order,

then the obligations affected by the Force Majeure Event is suspended insofar as it is affected by, and during the continuance of the Force Majeure Event.

44.3 Neither Party shall be released from any of its obligations under any Purchase Order or this Agreement as a result of a Force Majeure Event, and all Purchase Orders and this Agreement shall, subject to **Clause 44.5**, remain in effect for the duration of a Force Majeure Event.

44.4 The Affected Party shall furnish written reports every seven (7) days to the other Party on its progress in complying with its obligations, and provides any information relating to the Force Majeure Event and its effects that the other Party may reasonably request. If the Force Majeure Event continues beyond fourteen (14) days after the notice is given under **Clause 44.2** above, the Parties shall meet to discuss in good faith a mutually satisfactory resolution to the problem.

44.5 If the performance by the Affected Party of substantially all of its obligations under a Purchase Order is materially prevented, hindered or delayed by reason of a Force Majeure Event for a period of more than ninety (90) consecutive days, the other Party may terminate the Purchase Order with immediate effect by notice to the Affected Party on or at any time after the expiry of such ninety (90) day period. Upon termination of any Purchase Order by reason of Force Majeure Event, the amounts payable for a Purchase Order shall (after taking into account amounts previously paid under the Purchase Order) be limited to:

44.5.1 the relevant part of the Purchase Order Price, related to such parts of the System, Hardware, Software and Documentation that are delivered (for those System, Hardware, Software and Documentation which the Customer orders for delivery only) or have successfully achieved the relevant Milestone for payment at the date of termination, and

44.5.2 the relevant part of the Purchase Order Price, related to such parts of the Services that are performed at the date of termination.

44.6 Immediately after the end of the Force Majeure Event, the Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under the Purchase Order or this Agreement, as the case may be.

# 45. NON-SOLICITATION

45.1 The Supplier undertakes throughout the respective terms of this Agreement and each Purchase Order that it will not directly or indirectly, whether for itself or for the benefit of any other person, induce, incite, entice or endeavour to induce, incite, entice any officer or employee of the Customer to leave his or her employment.

# 46. ASSIGNMENT

46.1 The Supplier shall not, without the prior written consent of the Customer, assign, novate or transfer this Agreement, the Statement of Work and/or Purchase Order or any part thereof to any person, corporation, partnership, limited liability company, association, trust or other entity or organization in any way.

46.2 The Customer may assign, novate or transfer this Agreement, Statement of Work and/or Purchase Order to any of its Affiliates by notice in writing to the Supplier. The Supplier shall, where requested by the Customer, take such reasonable steps to execute such documents to give effect the said assignment, novation and/or transfer.

# 47. SUBCONTRACTING

47.1 The Supplier shall not sub-contract the performance of any of its obligations under this Agreement and/or a Purchase Order to any third party without prior written consent of the Customer, which may be granted or withheld by Customer, in its sole discretion. The failure to comply with this **Clause 47** shall be construed as a material breach of this Agreement and/or a Purchase Order.

47.2 If the Supplier uses a Permitted Sub-contractor, the Supplier:

47.2.1 is fully liable and responsible for all acts, defaults and neglects of such sub-contractors including its agents, servants, workmen and personnel as if they were the acts, defaults and/or neglect of the Supplier. Consent by the Customer shall not affect in any way the Supplier’s primary liability to the Customer;

47.2.2 warrants that each Permitted Sub-contractors engaged by the Supplier possesses all requisite resources, capacity, skills, qualifications and technical and financial means to perform the obligations sub-contracted to such Permitted Sub-contractor; Upon the Customer’s request, the Supplier shall promptly provide to the Customer the requisite evidence demonstrating that the Permitted Sub-contractor possesses such resources, capacity, skills, qualifications and technical and financial means; and

47.2.3 shall ensure that any and all obligations subcontracted to the Permitted Sub-contractors shall be performed by the Permitted Sub-contractor strictly in accordance with the relevant terms and conditions of this Agreement, Statement of Work and Purchase Order and shall further ensure the Permitted Sub-contractor comply with the same obligations as far as is reasonably practicable to which the Supplier is required to adhere to under this Agreement, the Statement of Work and Purchase Order.

# 48. SERVICE OF NOTICE

48.1 A notice, invoice, approval, consent, request or other communication in connection with this Agreement:

(a) must be in writing and in the English language; and

(b) must be left at the address of the addressee, or sent by A.R registered post or licensed courier to the address of the addressee or sent by email (to be followed by A.R registered post or licensed courier) to the email address of the addressee which is set out below or if the addressee notifies another address or email then to that address or email.

48.2 The address of each Party is:

**The Customer**

Addressed to: [ ]

Email: [ ]

With a copy to:

Legal Department

Level 4, No. 14, Jalan Majistret U1/26

HICOM Glenmarie Industrial Park

40150 Shah Alam, Selangor, Malaysia

Email: [general.counsel@time.com.my](mailto:general.counsel@time.com.my)

**The Supplier**

Addressed to: [ ]

Email: [ ]

48.3 For the avoidance of doubt, a notice must not be sent by electronic mail, unless agreed in accordance with **Clause 48.6**.

48.4 Any notice, invoice, approval, consent, request or other communication is, in the absence of contrary evidence, deemed to be received:

(a) in the case of A.R registered post, on the third Business Day after posting (if posted to an address in the same country) or fifth (5th) Business Day after the date of posting (if posted to an address in another country);

(b) in the case of a communication left at the address of the addressee or licensed courier, at the time the communication was so left.

48.5 A notice received or deemed to be received in accordance with **Clause 48.4** above on a day which is not a Business Day or after 6 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.

48.6 **Electronic Communication**

48.6.1 If the Supplier and Customer mutually agree in writing signed by a duly authorized representative of both Parties to use electronic mail as a primary mode of communication between the Parties, then all notices (including any approval, consent, or other communication) sent by electronic mail shall be deemed to be received at the time when it is sent on the condition that the entire message (including attachments) is sent to the correct electronic mail address on the Business Days and hours of between 9 a.m. to 6 p.m. on any Business Day according to local time in the place of receipt, failing which the receipt would have been received on the next Business Day.

48.6.2 The Supplier must at all times ensure that during the Purchase Order Term, use their best endeavours to ensure that their electronic mail systems used for the transmission of notices are at all times operating correctly and are capable of sending and receiving notices and confirming by electronic message in response that each notice has been delivered.

48.6.3 Notwithstanding anything to the contrary, notification by way of email shall not be applicable to or valid with respect to any legal notices, claims, demands, suits, actions and/or proceedings.

# 49. DISPUTE RESOLUTION

49.1 In the event that there is any dispute, controversy or claim arising out of or relating to this Agreement, or any breach, termination or invalidity of this Agreement or in the interpretation of this Agreement, the Statement of Work or Purchase Order (“**Dispute**”), either Party may issue a written notice (“**Dispute Notice**”) to the other Party stating the nature of the Dispute and requesting that the authorised representative of each Party resolve the Dispute. If the authorised representatives of the Parties are not able to resolve the Dispute after a period of sixty (60) days from the date of the Dispute Notice or such other extended period as may be mutually agreed between the Parties, then either Party may refer the Dispute to arbitration in accordance with the Asian International Arbitration Centre (“**AIAC**”) arbitration rules. No party may commence court proceedings or arbitration in relation to any Dispute until it has first attempted to settle the Dispute in accordance with this **Clause 49.1**.

49.2 The arbitration proceedings shall be conducted in English and the seat and place of arbitration shall be in Kuala Lumpur.

49.3 There shall be three (3) arbitrators. Each Party shall promptly appoint an arbitrator respectively within thirty (30) days from the date the Dispute is referred to arbitration and the two (2) appointed arbitrator shall then mutually agree on the third arbitrator to be appointed. If the two (2) appointed arbitrators fail to agree on the appointment of the third arbitrator within sixty (60) days from the date the Dispute is referred to arbitration or such other extended period as may be mutually agreed between the Parties, the arbitrator shall be appointed by the Director of Asian International Arbitration Centre.

49.4 Notwithstanding anything to the contrary, a Party shall not be prevented from seeking or obtaining an enjoining order, interim order or interim relief in the court prior to the arbitral tribunal being constituted.

49.5 The Parties agree that the arbitration award shall be final and binding on the Parties. The fees for the arbitration and/or other charges shall be borne by the losing Party, unless otherwise decided by the arbitrators.

49.6 No Party or person involved in any way in the creation, coordination or operation of the arbitration of any Dispute may disclose the existence, content or results of the Dispute or any arbitration conducted (including the award) under this Agreement, the Statement of Work or Purchase Order in relation to that Dispute unless the same is required by law or rules of any stock exchange.

49.7 Notwithstanding the provision of this **Clause 49**, a Party may pursue remedies (including interim or injunctive remedies) for breach of confidentiality under **Clause 37** in the Malaysian courts.

49.8 Notwithstanding the existence of any dispute, negotiation, mediation or arbitration at any time, the Parties shall, unless otherwise agreed, continue with the performance of their respective obligations under this Agreement.

# 50. GOVERNING LAW

This Agreement, the Statement of Work and any Purchase Order, including the arbitration agreement herein and which applies to the Statement of Work and Purchase Order, shall be governed by and shall be construed in accordance with Malaysian law.

# 51. AMENDMENT

No amendment or variation to this Agreement, Statement of Work and/or Purchase Order shall be effective or valid unless it is in writing and signed by a duly authorized representative of both Parties.

# 52. ENTIRE AGREEMENT

This Agreement, Statement of Work and the Purchase Orders represent the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto matter subject to **Clause 3.3**.

# 53. SEVERABILITY

Where any provision of, or the application of any provision of this Agreement, the Statement of Work and/or Purchase Order is illegal, invalid or unenforceable or deemed to be illegal, invalid or unenforceable, in whole or in part, such provision shall continue to apply with the necessary modification or replacement in order that that provision is legal, valid and enforceable provision and to also achieve as similar as possible the original contractual intent and rights of the Parties. In the event that it is not possible to modify or replace the relevant provision to make the provision legal, valid and enforceable, then such part of the provision which is illegal, invalid or unenforceable shall be severed but the remaining parts of the provision, and the remainder of this Agreement shall remain unaffected.

# 54. SURVIVAL OF PROVISIONS

The termination or expiry of this Agreement and the Purchase Order howsoever arising shall not affect such of the provisions hereof as are expressed to survive, operate or have effect thereafter until fulfilled including:

54.1 **Clauses 1, 3.4, 18, 20, 21, 22, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 61 and 63**; and

54.2 any other rights and benefits afforded to or accrued to the Customer including:

54.2.1 right to use licences which have been paid for by the Customer or granted to the Customer without charge; and

54.2.2 any other rights and benefits afforded to or accrued to the Customer including rights under warranties and/or defect liabilities with respect to all Deliverables.

# 55. TIME OF THE ESSENCE

Where a time period has been specifically provided for in this Agreement, the Statement of Work or a Purchase Order, the time period stated therein shall be of the essence.

# 56. WAIVER OF REMEDIES

56.1 No failure or delay by any Party in exercising any right, power or remedy under this Agreement, Statement of Work and/or Purchase Order shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy.

56.2 Without limiting the foregoing, no waiver by any Party of any breach of any provision of this Agreement, Statement of Work and/or Purchase Order shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Agreement, Statement of Work or Purchase Order. Any waiver by any Party hereto of a breach or default of any provisions in this Agreement, Statement of Work and/or Purchase Order shall be in writing, signed by a duly authorized representative of both Parties.

56.3 No approval or acceptance of any Documentation or tests shall operate to waive any rights of the Customer or obligations of the Supplier in respect of any Documentation or tests nor shall such approval or acceptance operate to remove any liability which the Supplier may have in respect of any default relating to such Documentation or tests.

# 57. CUMULATIVE RIGHTS AND REMEDIES

Except where provided otherwise in this Agreement or Statement of Work, and/or Purchase Order, all rights and remedies provided under this Agreement, the Statement of Work and/or any Purchase Order are cumulative and not exclusive of the rights, powers or remedies provided in this Agreement, Statement Work, any the Purchase Order or at law.

# 58. FURTHER ASSURANCES

Each Party agrees that from time to time, at the request of the other Party and without further consideration, it will execute and deliver such other documents and take such other actions as such other Party may reasonably request to consummate more effectively the transactions contemplated under a Purchase Order.

# 59. RELATIONSHIP

Nothing in this Agreement, Statement of Work or any Purchase Order or in any document referred to in it or any arrangement contemplated by it shall be construed to constitute either Party a partner or agent of the other Party for any purpose whatsoever, nor shall the execution, completion and implementation of this Agreement, Statement of Work or any Purchase Order confer on any Party any power to bind or impose any obligations to any third parties on the other Party or to pledge the credit of the other Party.

# 60. BINDING EFFECT

This Agreement, the Statement of Work and Purchase Order shall be binding upon the Parties and their permitted legal assigns and successors in title.

# 61. COSTS AND EXPENSES

61.1 Each Party is responsible for its own legal costs and expenses incurred in relation to the preparation of this Agreement, the Statement of Work and/or Purchase Order. The stamp duty in respect of this Agreement, the Statement of Work and the Purchase Order shall be borne by the Supplier. The Supplier shall return the signed Agreement, the Statement of Work and/or Purchase Order with the corresponding stamp certificate or evidence of stamping to the Customer within fourteen (14) days from the last date of signing (“Return Date”).

61.2 In the event the Customer does not receive the stamp certificate or evidence of stamping on or before the Return Date and the Supplier still fails, omits or neglects to provide the stamp certificate or any evidence of stamping within seven (7) days upon written request by the Customer, the Customer shall have the rights, but not the obligation, to stamp this Agreement, the Statement of Work and/or Purchase Order on behalf of the Supplier which the Supplier shall bear all costs associated with the stamping, including any penalties for late stamping.

61.3 In the event the Customer exercises the rights under Clause 61.2 above, the Supplier hereby authorises the Customer:

61.3.1 to stamp this Agreement, the Statement of Work and/or Purchase Order on behalf of the Supplier; and

61.3.2 to offset the cost of stamp duty and any penalties for late stamping paid by the Customer, against the payment due under the invoices issued by the Supplier in accordance with Clause 7.4.3 above.

61.4 For avoidance of doubt, Clauses 61.2 and 61.3 above shall not, in any way, prejudice or affect any other rights the Customer may have against the Supplier under this Agreement or a Purchase Order or under the law.

# 62. LANGUAGE

62.1 All data, correspondences, documents, descriptions, diagrams, instructions, markings for ready identification of major items in relation to the Deliverables and correspondences shall be in the English language.

62.2 Should the text of this Agreement, the Statement of Work or a Purchase Order exist in another language other than English, then the present English version shall prevail over any other language versions.

# 63. COUNTERPARTS AND ELECTRONIC SIGNATURE

63.1 This Agreement, Statement of Work, Purchase Order and other documents to be delivered under this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which, when taken together, shall be deemed to constitute one and the same, and shall be effective when counterparts have been signed by each of the Parties and delivered to the other Parties.

63.2 The Parties may sign and deliver this Agreement, Statement of Work, Purchase Order or any other documents contemplated by this Agreement electronically. Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties are intended to authenticate this Agreement, the Statement of Work, Purchase Order and any other document contemplated by this Agreement to have the same force and effect as manual signatures. Delivery of a copy of this Agreement, Statement of Work, Purchase Order or any other document contemplated by this Agreement, bearing electronic signature (i) by electronic mail in “portable document format” (PDF) or similar format intended to preserve the original graphic and pictorial appearance of a document; or (ii) through the use of electronic signature software shall have the same effect as physical delivery of the paper document bearing a wet ink signature. The Supplier consents to the Customer’s use of any third party electronic signature service provider as may be chosen by the Customer.

*[The remaining section of this page is intentionally left blank]*

**IN WITNESS WHEREOF** the Parties hereto have set their hands on the day and year first above written.

SIGNED for and on behalf of )

**TT DOTCOM SDN BHD** )

(Registration No.197901008085 (52371-A)) )

in the presence of :- )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

NRIC No.:

Designation:

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

Name:

NRIC No.:

Designation:

SIGNED for and on behalf of )

**[Supplier’s Name]** )   
(Registration No.: (\*)) )

in the presence of :- )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

NRIC No.:

Designation:

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

Name:

NRIC No.:

Designation:

# SCHEDULE 1

**DEFINITION AND INTERPRETATION**

1.1 Unless the context otherwise requires, the following terms shall have the following meanings when used in this agreement:

|  |  |
| --- | --- |
| **"Acceptance"** | that the System, Hardware, Software and/or Services have passed the relevant Acceptance Tests in accordance with the Acceptance Tests Procedures and Criteria; |
| **"Acceptance Certificate"** | means a written confirmation of Acceptance duly signed by an authorised signatory of the Customer acknowledging that the Deliverables have been accepted with such certificate being issued in accordance with this Agreement; |
| **"Acceptance Tests"** | means the formal, pre-defined tests and activities described in **Clause 15** and the relevant Statement of Work to determine whether the Acceptance Tests Procedures and Criteria are met; |
| **"Acceptance Tests Procedures and Criteria"** | 1. the validations and demonstrations performed for the purposes of confirming the compliance of any System, Hardware, Software and/or Services with the Specifications; and 2. the criteria and key performance indicators to be fulfilled in order for the System, Hardware, Software and/or Services to conform to the Specifications,   as agreed by the Parties in the relevant Statement of Work to form the basis of the relevant Acceptance Tests; |
| **"Advance Notice of Claim"** | means the document to be issued by the Supplier to the Customer setting out the details of any contractual claims arising out of a Purchase Order including but not limited to payment, extension of time, variation or any other claims or disputes between the Parties; |
| **"Affected Party"** | means a Party which is or could reasonably be expected to be, materially prevented, hindered or delayed from performing any of its obligations under this Agreement or any Purchase Order by reason of a Force Majeure Event; |
| **“Affiliates”** | means of a specified entity and/or person, whether incorporated or not, shall mean another entity and/or person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first entity and/or person; |
| **“Agreement”** | means this agreement including the schedules, any such modifications, variations, amendments or additions thereto, as the Parties may agree in writing from time to time; |
| **"Applicable Laws"** | means all published laws, statutes, regulations, by-laws, rules, codes, treaties, ordinances, instruments, judgements, decrees, injunctions, and orders of any court, arbitrator, government or governmental agency or authority and all rules, regulations, orders, permits, licences and consents of any government, governmental authority, local authority, court, or other body in the territory having jurisdiction; |
| **“Availability Term”** | has the meaning ascribed to it in **Clause 30.5.1**; |
| "Best Industry Practice" | means, in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, diligence, prudence, foresight and judgement which could reasonably be expected from highly skilled, experienced persons, entities and world leading suppliers and contractors engaged in comparable types of undertaking under similar circumstances, applying equivalent or better standards currently applied in the industry relevant to the Supplier, and any or a combination of System, Hardware, Software and/or Services and any other products, works and services that may become available to ensure, without limitation, the objectives identified in this Agreement and Purchase Orders that include best practice and value in respect of price, performance and time to market are achieved; |
| **"Business Continuity Plan"** | means the comprehensive written document provided by the Supplier setting out in detail the plan to guard against business disruption and that includes, but not limited to, descriptions of sequences of actions and the parties responsible for carrying them out in response to a series of identified risks or in case of unforeseen events with the objective of restoring the normal business operations of both the Customer and the Supplier without delay, such document shall address amongst other areas of emergency management, human resources, media and press releases in order to ensure uninterrupted continuation of the Customer’s business, networks and systems which are also being provided by or through the Supplier; |
| **"Business Day”** | means a day other than the following days:  (a) where an activity is to be performed in a State where Sunday is observed as the weekly holiday and/or with respect to the performance of any payment obligations, Saturday, Sunday, a public holiday in that particular State and a national public holiday throughout Malaysia. For clarity, the performance of any payment obligations shall be subject to Selangor State holidays; and  (b) where an activity is to be performed in a State where Friday is observed as the weekly holiday (excluding the performance of any payment obligations), Friday and Saturday, a public holiday in that particular State and a national public holiday throughout Malaysia; |
| **"Change Request"** | means a specific written request raised for a change, introduction of alterations, additions, amendments or modifications to a Purchase Order in accordance with **Clause 24.1**; |
| **"Charges"** | means the amounts payable by the Customer to the Supplier for the supply and performance of Deliverables as may be ordered under a Purchase Order from time to time and which are built on the item prices, schedule of rates and fees detailed in the Statement of Work or Purchase Order; |
| **"Commercial Service(s)"** | means the commercial provision of services to the general public that are generating significant monetary revenue for the Customer; |
| **"Commissioning”** | means the commissioning services specified in the relevant Statement of Work and ordered in a Purchase Order. The term “Commission” shall be construed accordingly; |
| **“Completion Date”** | means the date when the Deliverables or any relevant part of the Deliverables shall be accepted and subject to Final Acceptance according to the Implementation Plan or the Purchase Order, as the case may be, or such other date extended pursuant to **Clause 19**; |
| "Confidential Information" | includes all information relating to either Party including but not limited to information, knowledge or data of an intellectual, technical, scientific, financial, cost, pricing, commercial or marketing nature which is not in the public domain and in which the Disclosing Party has a business, proprietary or ownership interest or has a legal duty to protect, whether or not received from a third party in whatever form including but not limited to technical data/know-how, drawings, photographs, specifications, standards, manuals, reports, formulae, algorithms, processes, information lists, trade secrets, computer programs, computer software, computer data bases, computer development, processes, engineering techniques, strategies, customers (including any personal information and/or other non-public personal information about such end-users and any list, description or other grouping of end-users that is derived using any such personal information or non-public information), internal procedures, employees, business opportunity which the Disclosing Party considers to be confidential and whether it is identified by the Disclosing Party as confidential nature or otherwise and which may be furnished by either Party during the period of this Agreement; |
| "Control" | means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise; |
| **"Customer"** | means TT dotCom Sdn Bhd mentioned in 2nd page of this Agreement or TTDC; |
| **“Customer’s Business Integrity & Anti-Corruption Policy”** | means the TTDC’s Business Integrity & Anti-Corruption Policy as set out in **Schedule 3** which may be amended and/or supplemented from time to time; |
| **“Customer Data”** | includes but is not limited to information, materials and/or premises:   1. which are provided by the Customer or its Affiliates to the Supplier; 2. in respect of which the Customer has custody or control for purposes connected with this Agreement; 3. which are accessed, processed, transmitted, replicated or stored using or on the Customer’s information systems or equipment under this Agreement; or 4. Personal Data which the Supplier or its Affiliates controls the processing of or which comes into the knowledge, possession or control of the Customer pursuant to this Agreement; |
| **"Customised Works"** | means the Intellectual Property Rights which are created by or on behalf of the Supplier alone or jointly with the Customer and specifically customised for the Customer pursuant to a Purchase Order; |
| **"Date Compliant"** | means the ability of the Deliverables to:   1. process and continue to process data correctly and consistently with reference to any and all dates, including any date in any century or leap year; 2. function without being adversely affected by any date or change of date, including any date in any century or leap year; and 3. produce output (including any output for any interface to any other systems, software or hardware) which will clearly and correctly identify each date contained in such output, including the century or leap year in which each date falls; |
| **"Defect"** | means any part of Deliverables or material, goods or work incorporated or used in the works and/or Services which does not conform with, has an imperfection, deficiency, fails to perform to, lacks anything necessary or desirable for the completion or compliance with, the relevant quality standards in the Specifications or the relevant Statement of Work or pass the tests prescribed in the Statement of Work in any manner which is inconsistent or otherwise clearly erroneous; |
| **"Deliverables"** | means the System, Hardware, Software and/or Services, including but not limited to, any related documentation, designs, plans, reports, specifications, maps, papers and other materials, which the Supplier is obliged to provide under a Purchase Order to the Customer and any item, work or service that is incidental, ancillary or in any way imperative to the provision of the System, Hardware, Software and/or Services; |
| **“Delivery”** | means delivery in accordance with the delivery terms set out in **Clause 10**; |
| **"Delivery Date"** | means in connection with the supply of Deliverables, the date when the Customer requires delivery of Deliverables or a part of Deliverables as set out in the Statement of Work or a Purchase Order or a date extended by virtue of **Clause 19**; |
| **“Disclosing Party”** | means the Party disclosing the Confidential Information; |
| **"Dispute"** | has the meaning ascribed to it in **Clause 49.1**; |
| **"Dispute Notice"** | has the meaning ascribed to it in **Clause 49.1**; |
| **"Documentation"** | means all the 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 any Deliverables and/or, Network, site reports, project plans, network diagrams, site layout, diagrams, Acceptance Tests Procedures and Criteria and specifications and other related materials in machine or human readable form stored in any form or medium in relation to the supply of any Deliverables; |
| **"Endemic Failure"** | means Defect(s) or defect(s) in design, material and/or workmanship in any Deliverables or any part of the Deliverables supplied by the Supplier (including third party Deliverables) that either:   1. is of an endemic/systematic character and therefore found to repeat itself in a significant way. Such Defect(s) or defect(s) shall be deemed to have repeated itself in a significant way when the Defect(s) or defect(s) has appeared in more than [\*] percent of the Deliverables or part of the Deliverables concerned; 2. affects the fundamental/basic use and functionality of the Deliverables or part of the Deliverables concerned so that such Deliverables cannot at all or cannot without severe performance and/or capacity degradations/reductions can be used for the purpose that it was designed for as agreed by the Parties; or 3. even though it existed during the Warranty Period, due to its inherent nature, did not appear and was not possible to detect until after the expiration of such Warranty Period or cannot reasonably be expected to occur due to normal use; |
| **"Final Acceptance"** | means the overall acceptance by the Customer of Deliverables where the fixing of all Defects discovered has been completed, all necessary and required documentation and all the Acceptance Tests Procedures and Criteria have been met; |
| "**Final Acceptance Certificate**" | means an Acceptance Certificate issued by the Customer at Final Acceptance; |
| **“Final Acceptance Test”** | means the agreed technical and functional requirements specified in the Statement of Work to be met during the Final Acceptance Test; |
| **"Force Majeure Event"** | has the meaning ascribed to it in **Clause 44.1**; |
| **"Goods Receipt Notice"** | means a document issued by the Customer upon receipt of Deliverables at the Place of Delivery; |
| "Hardware" | means Supplier and third party equipment, spare parts and items (other than Software including any peripherals, ancillary items and related Documentation) supplied by the Supplier that may be standalone products, equipment, hardware or other active and passive items necessary to build a System or to be used in the Network. The Hardware ordered will be specified in the respective Purchase Order(s); |
| “Implementation Plan” | means the timetable and plan for the supply and performance of Deliverables containing the details set out in **Clause 11**; |
| **“Industry Standard”** | includes but is not limited to technical codes registered by and technical standards issued by the Malaysian Communications and Multimedia Commission, the International Telecommunications Union (ITU) standards, Interface Industry Standard and all generally applicable telecommunications standards (as updated from time to time) and the latest standard, or any other standards agreed by Parties in writing and signed by a duly authorized representative of both Parties; |
| **“Installation”** | means the installation services specified in the relevant Statement of Work and ordered in a Purchase Order; |
| **"Integration Services"** | means the services of integrating one or more System, Hardware, and/or Software with the Customer’s Network in accordance with the relevant Statement of Work and Purchase Order to ensure end to end compatibility. Integration Services may be ordered in a Purchase Order. The term “Integrate” and “Integration” shall be construed accordingly; |
| **"Intellectual Property Rights"** | means:patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how, secret formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights, moral rights and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition; andany application or right to apply for registration of any of the rights referred to in (a) above,are currently existing or will exist in the future; |
| **“Interface Industry Standard”** | includes but is not limited to IEEE (as updated from time to time) and the latest interface standard; |
| **“Internal & External System”** | has the meaning ascribed in **Clause 14.1.3**; |
| "Inter-operability" | means:   1. the ability of Deliverables provided by the Supplier to fully integrate, interconnect and successfully operate technically and functionally, including end-to-end compatibility, with the Customer Network; and 2. such condition allows utilisation by the end users and meets the Customer’s requirements.   The term “Interoperate” and “Interoperating” shall be construed accordingly; |
| **"Inter-Operability Tests"** | means the activities, tasks and such other action carried out in order to determine whether or not the Deliverables have the ability to work with the Customer’s Network without requiring any input from the Customer by using either Interface Industry Standards or by making use of services that can integrate one provider interface into another, and that are particularly set out in the relevant Statement of Work; |
| "Invoice(s)" | means the document to be issued to the Customer in respect of the amounts indicated and cleared as being payable to the Supplier; |
| "Key Personnel" | means personnel identified as the key members in the Implementation Plan; |
| "Liquidated Damages" | means the genuine and reasonable pre-estimates of loss that the Customer would likely suffer should there be a delay in the event of failure to meet the Delivery Date or Completion Date which have been negotiated between the Parties in this Agreement and/or Purchase Order on an equal bargaining position where the Parties agree that such pre-estimates do not amount to penalties; |
| **“Loss of Licence”** | has the meaning ascribed to it in **Clause 34.3**; |
| **“Malware**" | means any contaminants, code, programming instructions, malicious or harmful software or software components (programming instructions or code) or device which may impair, interfere, corrupt or otherwise adversely affect the operation of any computer or system, prevent or hinder access to any program or data (whether by rearranging within the computer or any storage medium or device, altering or erasing, the program or data in whole or in part, or otherwise), gain unauthorised access to or control of any program, equipment, system or data or collect data or surveillance without authorisation, including worms, Trojan horses, computer viruses, ransomware, spyware or similar things; |
| **“Maintenance and Support Agreement”** | means the contracts pursuant to which, prior to the certain date agreed by Parties, Supplier has obligations to provide maintenance and support to Customers; |
|  |  |
| **"Milestone"** | means:   1. in relation with the performance of any Services, the point in time that the key elements or activities must be completed by the Supplier and which shall be identified in the relevant Statement of Work and Purchase Order; 2. in relation to the supply of System, Hardware and/or Software, the point in time that such System, Hardware and/or Software must be delivered or installed by the Supplier and which shall be identified in the Implementation Plan or Purchase Order. |
| **“Milestone Date”** | means the date for completion of a Milestone as described in the Implementation Plan which may be extended by virtue of **Clause 19**; |
| **“Multi-Supplier Integration”** | means the integration of the System, Hardware and Software with the system, hardware and software of the Customer’s other vendors to achieve Interoperability; |
| **“Multi-Supplier Integration Tests”** | means any tests related to Multi-Supplier Integration; |
| **"Network"** | means the Customer’s networks and systems (including telecommunications infrastructure, and other communications network and systems) in the country of the Customer that may exist from time to time; |
| **“Parent Guarantee”** | means an "unconditional on-demand" and irrevocable guarantee required to be procured by the Supplier from its holding and/or ultimate holding company acceptable to the Customer from time to time which shall substantially be in the format set out in **Part B of Schedule 2** unless otherwise as security for the due performance of the Supplier of its obligations under a Purchase Order; |
| **"Parties"** | means the Customer and the Supplier when referred to collectively; |
| **"Party"** | means the Customer or the Supplier, as the case may be; |
| **"Performance Guarantee"** | means an "unconditional on-demand" and irrevocable guarantee required to be procured by the Supplier from a reputable financial institution acceptable to the Customer from time to time as security for the due performance of the Supplier of its obligations under a Purchase Order; |
| **"Permitted Sub-contractor"** | means the sub-contractor approved by the Customer to undertake certain obligations of the Supplier under a Purchase Order; |
| **“Personal Data”** | means all or a part of personal data, personal information or data relating to individuals of any kind provided by the Customer or its Affiliates to the Supplier that relates directly or indirectly to the Customer or its Affiliates or in the possession of the Customer or its Affiliates including any expression of opinion about the Customers or its Affiliates; |
| **"Personnel"** | means in relation to a person or entity, its employees, directors, officers, agents, advisers, representatives, contractors and subcontractors and the personnel of such agents, advisers, representatives, contractors and subcontractors; |
| **“Place of Delivery”** | means the location point or the Site for delivery as specified in a Purchase Order and at which Deliverables are going to be delivered or performed as may be identified by the Customer from time to time; |
| **“Pre-Existing Agreement”** | means any existing contract and/or agreement between the Customer and Supplier, the subject matter of which is similar to this Agreement; [*Alternatively, to specifically list out the Pre-Existing Agreements*] |
| **“Pre-Existing Works”** | has the meaning ascribed to it in **Clause 32.1.1**; |
| **"Provisional Acceptance"** | means the acceptance that will occur when the respective Provisional Acceptance Tests (PAT) is performed successfully (i.e. when the PAT Requirements are met) and no Severity 1 or Severity 2 Defects remains in any Deliverables in accordance with the Statement of Work; |
| **“Project Schedule”** | means the document that includes the overall duration and timelines of a project and when the activities and events are planned to happen in order to achieve the Milestones, key activities, dates for review meetings, delivery, installation, commissioning, integration, interoperability, acceptance testing and training and also include the logical dependencies, critical paths and activity durations taking into account resource levels in order for the Supplier to provide the System, Hardware, Software and Services; |
| **"Provisional Acceptance Certificate"** | means an Acceptance Certificate to be issued by the Customer at the Provisional Acceptance; |
| **“Provisional Acceptance Test Requirements” or “PAT Requirements”** | means the agreed technical and functional requirements specified in the Statement of Work to be met during the Provisional Acceptance Test; |
| **“Punch List”** | means an agreed list of Severity 3 Defects prepared by the Customer in cooperation with the Supplier during the respective Provisional Acceptance Test. Severity 3 Defects shall be remedied by the Supplier prior to Final Acceptance; |
| **"Purchase Order"** | means the order issued by the Customer and confirmed by the Supplier in accordance with this Agreement for the supply or provision of the Deliverables; |
| **"Purchase Order Price"** | means the amount of money indicated in the Purchase Order; |
| **"Receiving Party"** | means the Party receiving the Confidential Information; |
| **"Requisite Records"** | means data, records, materials and documents in any media and format which relate to ­Deliverables, service levels, Charges or otherwise relate to the performance of the Supplier's obligations under this Agreement and/or the applicable Purchase Order, and/or which demonstrate that the Supplier is in compliance with this Agreement and all Applicable Laws relating to the performance of the Supplier’s obligations under this Agreement and/or the applicable Purchase Order and all anti-bribery laws and anti-money laundering laws, and which are reasonably necessary to enable the Customer, its auditors, a regulator or the appointees or the representatives of any of the above to verify the accuracy of such data, records, materials and documents and to undertake the activities set out in this Agreement or the Purchase Order, as the case may be; |
| **"Responsibility Matrix"** | means the table setting out the respective responsibilities and duties of the Parties in relation to a Purchase Order; |
| **"Services"** | means any services described in the relevant Statement of Work that may be provided by the Supplier and this may include, but is not limited to, provision of Deliverables, implementation services, Integration Services, maintenance and support, consultancy, optimisation, business, design, site acquisition, planning and design services, and project management. Services ordered will be set out in the respective Purchase Orders; |
| “Severity 1” | means a very serious Defect, problem and/or disturbance in the System, Hardware or Software which is causing the System, Hardware or Software, or a major feature in the System, Hardware or Software to become inoperative or severely disturbed or frequently interrupted, to crash, to cause database or file corruption, or potential data loss, program hangs requiring reboot, inability to make calls, functions are not developed or a severe performance degradation, service degradation or loss of capability in the System, Hardware or Software or such major feature in the System, Hardware or Software; or any other Defect, problem and/or disturbance agreed by Parties in writing and signed by a duly authorized representative of both Parties from time to time.  Unless otherwise proven by the Supplier, the Customer’s classification of the relevant Defect shall prevail, i.e. whether the relevant Defect is a Severity 1, 2 or 3 Defect; |
| “Severity 2” | means a serious Defect, problem and/or disturbance in the System, Hardware or Software, which is causing, or is likely to cause the System, Hardware or Software, or a major feature in the System, Hardware or Software, to become disturbed or frequently interrupted or a performance degradation, unusable major system component due to failure or incorrect functionality, defects causing serious problems, such as lack of functionality or insufficient or unclear error messages that can have a major impact to the end customer, service degradation or loss of capability of the System, Hardware or Software or such major feature in the System, Hardware or Software. Such serious defect could also result in operation and maintenance affecting faults that prohibits proper operation or maintenance or results in a lower level of System, Hardware or Software performance that may result in end customer complaints or significantly increased workload on the Customer’s maintenance staff; or any other Defect, problem and/or disturbance agreed by Parties in writing and signed by a duly authorized representative of both Parties from time to time.  Unless otherwise proven by the Supplier, the Customer’s classification of the relevant Defect shall prevail, i.e. whether the relevant Defect is a Severity 1, 2 or 3 Defect; |
| “Severity 3” | means a Defect, problem and/or disturbance in the System, Hardware or Software, resulting in a minor deviation from the Specification, but which affects the services to the end customers or causes a significant increase in the cost of operation of the System, Hardware or Software for the Customer. There is no risk of losing the service or getting an incremental degradation, e.g. inability to send SMS to one network operator, on site or cell out of service, power issues on a Site; or any other Defect, problem and/or disturbance agreed by Parties in writing and signed by a duly authorized representative of both Parties from time to time.  Unless otherwise proven by the Supplier, Customer’s classification of the relevant Defect shall prevail, i.e. whether the relevant Defect is a Severity 1, 2 or 3 Defect; |
| **“Statement of Work”** | means one or more statement of works for each project comprising of any System, Hardware, Software and/or Services. The Statement of Work will contain the requisite information listed out in **Clause 4** and the format of which is set out in **Part A of Schedule 2**; |
| **"Software"** | means:   1. any computer, executable code, programmes, software, module or package or any part thereof in binary code; 2. all user documentation in respect of such programs; 3. all updates to the software and Software Releases together with input and output formats, modules and workarounds and any part of the software, object codes, programme listings, data models, flow charts, outlines, narrative descriptions, operating instructions and supporting documentation; and 4. the tangible source media upon which such programmes and documentation are recorded, including all back-up copies.   Software available for licensing may include third party Software. Software purchased or licensed will be set out in the respective Purchase Order(s). Software refers to both basic and optional software. New Software Releases may be supplied under this Agreement or alternatively be supplied and integrated in the System Upgrade service. Any such new Software Release and/or Software Update supplied under this Agreement shall form an integral part of the Software and System supplied under this Agreement; |
| **"Software Releases"** | means a new major release of Software, providing new and enhanced functionality and increased capacity to any Software or System and that is subject to general availability to the Supplier’s customers. Any new Software Release delivered under this Agreement shall, as a minimum, include all functionalities and available features (whether basic or optional features) previously licensed by the Customer; |
| **"Spare Parts"** | means any replacement item or part required to fix or repair a Defect meeting or exceeding the Specification of the item or part it replaces; |
| **"Specifications"** | means the technical and functional specifications or requirements for the System, Hardware, Software or Services as set out in the relevant Statement of Work that include detailed descriptions of design and materials used, standards of workmanship or materials to be met, behaviours or other characteristics of a component, element, system or network, manufacturers and the Supplier’s specifications, specifications relating to compatibility, interoperability, integration and interfacing, such specifications as would reasonably be expected for products, works and services having the purpose and characteristics of the System, Hardware, Software or Services, or as specified by any applicable international standards, including any amendments from time to time agreed between the Parties; |
| **“Supplier”** | has the meaning ascribed to it in the 2nd page of this Agreement; |
| **"Supplier Personnel"** | means the Personnel of the Supplier; |
| **"System"** | means the Supplier’s system solution, comprising Hardware, Software and Services. The System has a developmental element and thus references to the System shall mean System at each particular phase in its development from the Customer’s initial order to its final configuration at the end of the term of this Agreement; and |
| **"Warranty Period"** | means the time period prescribed in **Clause 31.1**, during which the Deliverables are warranted by the Supplier. |

1.2 Unless the context otherwise requires:

1.2.1 words denoting:

(a) the singular includes the plural and vice-versa;

(b) the masculine gender shall include the feminine and neuter genders and vice-versa; and

(c) natural persons include bodies corporate and unincorporated;

1.2.2 references to any legislation or to any provision of legislation shall include any modification or re-enactment of that legislation or any legislative provision substituted for, and all regulations, directives, by-laws, rules and statutory instruments issued or made under such legislation or provision;

1.2.3 references to an enactment or statutory provision include a reference to any repealed statute or statutory provision which it re-enacts (with or without modification);

1.2.4 where a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

1.2.5 references to any Party to this Agreement or any other agreement or instrument shall include that Party's successors and permitted assigns;

1.2.6 references to any agreement or instrument shall include references to such agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

1.2.7 references to “writing” shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;

1.2.8 references to "includes" or "including" shall mean "includes without limitation" or "including without limitation";

1.2.9 if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;

1.2.10 if a period of time is specified and runs from a given day or the day of an act or event, it shall be calculated exclusive of that day;

1.2.11 references to rights and remedies “at law” includes common law and equity;

1.2.12 for the interpretation of technical telecommunications terms and to determine whether the delivered System, Hardware or Software meet the Customer’s requirements, the definitions and usage of terms contained in the [ITU/3GPP/GSM] specifications/recommendations and other relevant specifications or recommendations, shall apply to this Agreement to the extent not inconsistent with any terms or conditions in this Agreement;

1.2.13 no rule of construction or interpretation applies to the disadvantage or detriment of the Party having control or being responsible for the preparation of this Agreement;

1.2.14 in construing any of the provision in this Agreement and/or the Purchase Order which do not specifically provide as to how any additional or increased cost is to be dealt with, then in such case, it shall be deemed that such cost is included in the Purchase Order Price; and

1.2.15 where a general obligation is followed by a more specific obligation, the general obligation shall not be construed restrictively by reference to the specific obligation or deemed to be fully performed if the specific obligation is performed and similarly where the description of a service in general terms is followed by the more specific description of certain elements of that service, the general description of the service shall not be construed restrictively by reference to the elements more specifically described, nor shall the service necessarily be deemed to be fully performed if only elements which are described are provided; and

1.2.16 references to:

(a) a Clause, means a clause in the main body of this Agreement;

(b) a Paragraph, means a paragraph in a Schedule to this Agreement; and

(c) obligations in this Agreement or the Purchase Order, includes representations, warranties, undertakings and indemnities in this Agreement or the Purchase Order, as the case may be.

# SCHEDULE 2

**FORMS AND TEMPLATES**

PART A – STATEMENT OF WORK

**STATEMENT OF WORK**

**FRAMEWORK AGREEMENT FOR ACTIVE ELEMENTS**

1. This Statement of Work is executed between **TT dotCom Sdn Bhd (Registration No. 197901008085 (52371-A)** and [Supplier] pursuant to the Framework Agreement for Active Elements dated [ ] between the Parties (“**Agreement**”).

2. This Statement of Work is an integral part of the Agreement and shall be governed by the terms and conditions of the Agreement subject to such additions and modifications stated in this Statement of Work.

3. This Statement of Work shall also form an integral part of the Purchase Order which makes reference to this Statement of Work.

4. All terms used in this Statement of Work shall have the meaning prescribed to it in the Agreement unless otherwise stated in this Statement of Work.

5. This Statement of Work contains the project’s specific details and its scope of works as follows:

| **No.** | **Subject Matter** | **Details** |
| --- | --- | --- |
| 1. | Scope of Work | *Description of the Scope of Work i.e. details of the Systems, Hardware, Software and/or Services to be provided by the Supplier.*  *Whether it is on a turnkey or non-turnkey basis.* |
| 2. | Deliverables | *List of Deliverables required for the Scope of Work*  *Eg.*   1. *System, Hardware, Software and/or Services to be provided by the Supplier* 2. *Licence to software* |
| 3. | Specifications and Functional & Technical Requirements | *To insert details and descriptions*  *Eg. Commissioning services, Installation services, Integration Services.* |
| 4. | Service Levels and/or key performance indicators. | *(if applicable)* |
| 5. | Charges | *Lump Sum or Unit pricing or other pricing mechanism*  *To include other pricing terms as required for unit pricing, if any.*  *To stipulate if the Charges are exclusive of Taxes.* |
| 6. | Invoicing Milestone | *Example:*    *For standalone Hardware - 100% upon delivery or 50% upon issuance of Purchase Order and balance upon.*  *For standalone Software – 100% upon installation of Software.*  *For a System: 60% upon Provisional Acceptance and 40% upon Final Acceptance.* |
| 7. | Performance Guarantee | *Yes/No*  *If yes, insert the amount and the duration.* |
| 8. | Parent Guarantee | *Yes/No*  *If possible, to stipulate the entity to provide the Parent Guarantee.* |
| 9. | Place of Delivery | *Location*  *Incoterm to be adopted (if applicable).* |
| 10. | Project Schedule | *Specify Milestone Date, Delivery Date and Completion Date.* |
| 11. | Implementation Plan | *(If required)*  *Refer to Clause 11 and Clause 12 on the details.* |
| 12. | Liquidated Damages for Delay and/or Service Credits | *As per Clause 18.2.*  *If there is a higher figure to insert the new formula in this SOW.* |
| 13. | Responsibility Matrix | *To set out the respective parties obligations in relation to a particular scope of work.* |
| 14. | Acceptance Test Procedure and Criteria | *As per Clause 15.1.7 for purchase of Hardware or Software on a standalone basis unless otherwise stated in this SOW.*  *For other Deliverables, to detail out the applicable Test Plan and Criteria for the specific projects such as Final Acceptance Test, Provisional Acceptance Requirements.*  *The details can be attached as an Annexure.* |
| 15. | Title and Risk | *To stipulate if it differs from the standard in Clause 17.1.* |
| 16. | Warranty Period | *To stipulate if it differs from the standard in Clause 31.1.* |
| 17. | Insurance | *To insert the amounts for the insurances under Clause 43.1(b) and (c).* |
| 19. | Additional Terms | *To insert any other specific terms and/or warranties (including commercial terms) relating to the project which is not currently addressed in the FWA.* |

*Note: - To include annexures/schedules if required.*

6. The Customer’s obligation to purchase any of the Deliverables only arises if a Purchase Order with respect to this Statement of Work has been issued by the Customer and accepted by the Supplier in accordance with the Agreement.

The Parties agree to be bound by the terms of this Statement of Work as of the latest date a Party executes this Statement of Work.

SIGNED for and on behalf of )

**TT DOTCOM SDN BHD** )

(Registration No.197901008085 (52371-A)) )

in the presence of :- )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

NRIC No.:

Designation:

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

Name:

NRIC No.:

Designation:

SIGNED for and on behalf of )

**[Supplier’s Name]** )   
(Registration No.: (\*)) )

in the presence of :- )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

NRIC No.:

Designation:

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

Name:

NRIC No.:

Designation:

**PART B – TEMPLATE PARENT GUARANTEE**

***Guarantor’s Letter head***

*[Insert Date]*

***TT DOTCOM SDN BHD***

***(Registration No. 197901008085 (52371-A))***

*No.14, Jalan Majistret U1/26,*

*HICOM Glenmarie Industrial Park,*

*40150 Shah Alam,*

*Selangor.*

***PARENT GUARANTEE***

*We, [Insert the name, registration number and address of Guarantor] (****“Guarantor****”) have been informed and are aware that [Name of Supplier and registration number] (“****Supplier****”) and* ***TT DOTCOM SDN BHD*** *(“****Customer****”) have entered into a [Framework Agreement for Active Elements] dated [insert] which is a master framework agreement for the provision of Systems, Hardware, Software and/or Services (“****Agreement****”). We acknowledge and agree that our parent guarantee is required pursuant to the terms and conditions of the Agreement. In consideration of the Customer entering into the Agreement with the Supplier, we agree to grant to the Customer this Parent Guarantee subject to the terms and conditions set out herein.*

*1. We, the Guarantor, hereby irrevocably and unconditionally guarantee to Customer the due and punctual performance by the Supplier, its successors and assigns, of each and all of the obligations and undertakings under the Agreement and each and every Statement of Works and Purchase Orders issued and executed pursuant to the Agreement to the extent that the Supplier should fail to perform all or part of any of those obligations and undertakings. We hereby undertake, upon receipt of a written demand from the Customer, to fulfil and fully perform each and all of the obligations and undertakings of the Supplier, its successors and assigns under the Agreement and each and every Statement of Works and Purchase Orders issued and executed pursuant to the Agreement which have not been performed or fully performed by the Supplier.*

*2. This Parent Guarantee cannot be called upon for failure on the part of the Supplier in the event the Supplier has remedied its failure in accordance with the provisions of and within the relevant period stipulated by the Agreement, Statement of Work or otherwise given by the Customer. In any event, where any failure on the part of the Supplier can be remedied and/or the Agreement or Statement of Work provides for an opportunity to remedy, the Supplier shall be given such opportunity to remedy, before this Parent Guarantee is called upon or invoked.*

*3. The Guarantors confirms, represents and warrants that:*

*(a) it has read and is fully aware of all the terms and conditions of the Agreement and each and every Statement of Work and Purchase Orders issued and executed pursuant to this Agreement; and*

*(b) will read and be fully aware of all the terms and conditions of each and every Statement of Work and Purchase Orders to be issued and executed pursuant to this Agreement.*

*4. The provisions of this Parent Guarantee shall be binding on and enure to the benefit of the Guarantor and the Customer and their respective successors and assigns, provided that the Guarantor may not assign or transfer any of the Guarantor's rights and obligations hereunder without the prior written consent from the Customer. We confirm that the benefit of this Parent Guarantee may be assigned by the Customer with prior notice to the Guarantor.*

*5. This Parent Guarantee is irrevocable. It shall come into full force and effect as of [insert date] and shall continue in full force and effect until all the Supplier's obligations and liabilities under the Agreement, Statement of Works and Purchase Orders have been fully performed and discharged, whereupon this guarantee shall expire and shall be returned to the Guarantor, and the Guarantor’s liability hereunder shall be discharged absolutely.*

*6. In the event that the Guarantor fails to comply with its guarantee, obligations and undertakings provided under this Parent Guarantee, the Customer reserves all rights available to it under this Parent Guarantee and at law to bring any action and/or claim against the Guarantor.*

*7. The Guarantor’s obligations and liabilities under this Parent Guarantee shall not be affected by any act, omission, matter or thing which but for this provision might operate to release, discharge, diminish, prejudice or otherwise exonerate the Guarantor from the Guarantor's obligations and liabilities hereunder in whole or in part, including without limitation and whether or not known to the Guarantor or the Customer:*

*(a) any time, waiver or consent granted to, or composition with, the Supplier or other person;*

*(b) the release of the Supplier or any other person under the terms of any composition or arrangement with any creditor of the Supplier;*

*(c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, the Supplier or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;*

*(d) lack of power, authority or legal personality of or dissolution or change in the name, status or constitution of the Supplier or any other person;*

*(e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of the Agreement, any Statement of Works and/or the Purchase Orders;*

*(f) any unenforceability, illegality, invalidity or of any obligation of any person under the Agreement, Statement of Works and/or Purchase Orders;*

*(g) any bankruptcy, insolvency or similar proceedings;*

*(h) the suspension and/or termination of the Agreement and/or any Statement of Work and/or Purchase Order for any reason whatsoever; and/or*

*(i) any other act, event or omission (whether with or without the Guarantor’s knowledge or consent) which, in the absence of this provision, might operate to exonerate in whole or in part, any obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred upon you by this Guarantee or by law.*

*8. Any payment by the Guarantor made hereunder shall be made free and clear of, and without deduction or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and whomsoever imposed.*

*9. A notice or other communication in connection with this Parent Guarantee:*

*(a) must be in writing and in the English language; and*

*(b) left or sent to the address of the addressee as follows:*

***The Guarantor***

*Addressed to: [ ]*

***The Customers***

*Addressed to: [ ]*

*10. This guarantee shall be governed by the laws of Malaysia.*

*11. All costs and disbursements of and incidental to this Parent Guarantee and the collection of any money due or to become due hereunder including your legal costs shall be borne by the Guarantor.*

*12. This Parent Guarantee shall constitute a separate and independent obligation of the Guarantor and shall apply irrespective of any indulgence granted to the Guarantor from time to time.*

*Yours faithfully,*

***ACKNOWLEDGEMENT AND ACCEPTANCE***

*We refer to your Parent Guarantee dated and hereby acknowledge and accept the contents of the Parent Guarantee.*

*Signed by )*

*for and behalf of )*

*)*

*in the presence of:- )*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Witness Name:*

*Date:*

# SCHEDULE 3

**CUSTOMER’S BUSINESS INTEGRITY & ANTI-CORRUPTION POLICY**

The Customer’s Business Integrity and Anti-Corruption Policy can be found on <https://www.time.com.my/wp-content/uploads/pdf/general/TIME%27s-ABC-Policy_11Mar22_V3.pdf> and shall form an integral part of this Agreement.

# SCHEDULE 4

**MIGRATION ISSUES**

# SCHEDULE 5

**CUSTOMER’S DATA PROCESSING TERMS (IF APPLICABLE)**

The Customer’s Data Processing Terms can be found as below and if applicable, shall form an integral part of this Agreement.

