

## SERVICE AGREEMENT

THIS SERVICE AGREEMENT ("**Agreement**") is made the \_\_\_ day of \_\_\_\_\_ 2020 (the "**Effective Date**")

BY AND BETWEEN:

- (1) The Government of Bermuda as described in Schedule 1 (hereinafter referred to as the "**Government**", "**we**", "**our**" or "**us**"); and
- (2) The supplier of service under this Agreement (whose name and contact details are set out in Schedule 1 to this Agreement and is hereinafter referred to as the "**Supplier**" or "**you**").

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

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

## GENERAL TERMS AND CONDITIONS

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

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

### **4. Definitions**

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

"**Agreement**" means this Service Agreement and includes these General Terms and Conditions, Schedule 1 and Appendix 1;

"**Appendix 1**" contains the statement of work or "**SOW**";

"**Business Days**" means Monday to Friday between 9am – 5pm in Bermuda;

"**Claims**" means any written or oral claims,

actions or demands for money (including taxes or penalties) or service or for any allegation of a breach in rendering or failure to render any Service performed or which ought to have been performed. Claims also includes patent, trade secret, copyright, or other intellectual property right claims, claims connected to Equipment including infringement of Software, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses);

"**Commencement Date**" means the date of the commencement of the Service as set out in Schedule 1;

"**Completion Date**" means the date of the completion of the Service as set out in Schedule 1;

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

"**Contact**" means the Public Officer or other person appointed as the Government contact;



“**Consents**” means any qualifications, rights, permits, licenses, immigration approvals, authorisations or other consents;

“**Data**” means logbooks, records or data files used or created pursuant to a Service (including electronic storage media, Software, Source Code, any data base and data base rights, personal or personally identifiable information relating to an identified or identifiable individual, voice and data transmissions, including the originating and destination numbers and internet protocol address, date, time and duration) and other relevant data connected with the Service;

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

“**Equipment**” means the Supplier provided equipment including any mobile devices, hardware, Software or cables used to provide a Service;

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

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

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

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

“**Insurance Policies**” means an amount of not less than the minimum level of insurance required by law or a regulatory body or that is required to cover for similar service as are provided in this Agreement or the amount as set

out in Schedule 1, whichever is greater, covering you and your officers, directors, employees, agents, or subcontractors, professional negligence, errors and omissions and shall be on an “*occurrence basis*”. “The Government of Bermuda” shall be endorsed as an additional insured on the required policy or policies and the insurances afforded to the Government of Bermuda shall be primary insurance;

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

“**License**” means the non-exclusive, unlimited, royalty-free right granted by the Supplier;

“**Objective**” means the targets, results and goals required by the Government;

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

“**PIPA**” means the *Personal Information Protection Act 2016*;

“**Representative**” means the person providing a Service on the Supplier’s behalf;

“**Schedule 1**” contains details of the parties, the Fee, Term, Insurance Policies and other special conditions;

“**Service**” means the provision of all services and deliverables contemplated under this Agreement and includes the use of any Equipment and Software;

“**Security Procedures**” means rules and regulations governing access to, and health and safety procedures while on, Government premises; and information technology security protocols;

“**Software**” means the Supplier provided



software including modified software, third party software and bespoke software used for the Equipment and the Service;

“**Source Code**” means the source code within the Software, in the language in which the Software was written, together with all Documents, all of a level sufficient to enable the Government’s personnel to understand, develop and maintain that Software.

“**Term**” means the term of this Agreement as set out in Schedule 1.

## **2. Provision of Service**

- 2.1 You agree to perform and complete a Service in accordance with and subject to these General Terms and Conditions, Schedule 1 and Appendix 1 and we agree to pay the Fee, for the Service.
- 2.2 In the event of conflict between Schedule 1, Appendix 1 and these General Terms and Conditions, the order of precedence to resolve any such conflict shall be as follows: (i) Appendix 1; (ii) Schedule 1; and (iii) these General Terms and Conditions.
- 2.3 In the event that it is required and with our prior due diligence and written approval, you may appoint a Representative who shall have full authority to act and provide the Service on your behalf. Details of the Representative shall be set out in Appendix 1.
- 2.4 You are responsible for all acts or omissions of a Representative relating to a Service and for ensuring their compliance with the requirements of this Agreement.
- 2.5 You may not subcontract or outsource your obligations under this Agreement beyond using the Representative, without our prior written consent and you shall ensure that, the Representative co-operates with our employees to effectively carry out your obligations under this Agreement.
- 2.6 We may request, by notice in writing to you, the replacement of the Representative, and agreement with such request shall not be unreasonably withheld. You shall use your best endeavors to replace the Representative with another qualified individual and such replacement shall be subject to approval by us.

2.7 **Documents:** You shall provide Documents as requested or by the date as agreed between the parties and we shall have the right to take possession of and use any portions of the Documents notwithstanding any provisions expressed or implied to the contrary.

2.8 You acknowledge that we will be:

- (a) relying on the Documents on the basis that they are accurate and complete in all material respects and are not misleading;
- (b) relying on your and the Representative’s skills, expertise and experience concerning the provision of the Service; and
- (c) using your reports and any other advice and assistance provided under this Agreement.

2.9 **Security Procedures:** The Service shall be provided in such place and location as instructed by us.

2.10 If the Service is required to be provided on our premises or to use Government IT systems, you and the Representative will conduct yourselves in a professional and safe manner and you and the Representative shall at all times comply with and be subject to Security Procedures.

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

2.12 We shall inform you of the Contact, i.e. whom you or the Representative shall be reporting to and who will accept the Service.

2.13 The Service is provided on a non-exclusive basis to us.

## **3. Government Responsibilities**

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

## **4. Additional Service**

4.1 You shall be responsible to pay the Representative for the provision of a Service.



- 4.2 Additional service or variations in the Service may be required after the date of execution of this Agreement and may be performed upon our prior written approval. Such written approval shall be evidenced by a change authorisation order (“**Change Order**”) or such other written authorisation as approved and signed by the Contact or a duly authorised Public Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.
- 4.3 All Change Orders are subject to the terms and conditions of this Agreement.
- 4.4 The Fee for additional service shall be agreed by us in writing prior to any additional service being performed.
- 5. Fee, Invoicing and Payment**
- 5.1 We shall compensate you the Fee for the Service, in arrears, during the Term. The Fee shall be set out in Schedule 1 and paid in Bermuda Dollars. The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full.
- 5.2 The Fee will be subject to deductions by law in the event that you have not registered as a service provider with the relevant Government department.
- 5.3 The Fee will be subject to further deductions for the following reasons:
- (a) where there has been an overpayment to you for any reason;
  - (b) if you have not delivered the Service or any part of the Service, as required;
  - (c) where we have suffered loss by your failure to follow instructions or exercise due diligence;
  - (d) if you cause damage to Government property, the value of replacement or repair of the damaged property;
  - (e) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period; and
  - (f) any overpayments or advances of payment taken in excess of the Fee.
- 5.4 You shall be responsible to pay the Representative for the provision of a Service.
- 5.5 You will only be paid the Fee for the time that you provide a Service. For the avoidance of doubt, you will not be paid during any time that you do not provide Service or if you provide additional service which have not been prior approved in writing from an authorised Public Officer. In addition, you will not be paid for public holidays and in the event that you provide Service on a public holiday or provide additional service without prior written approval, such amounts will not be paid or if paid, will be deducted from the Fee, unless otherwise agreed in writing.
- 5.6 **Invoicing:** You shall provide a monthly invoice for the Service as set forth herein, with supporting documentation and itemising the following:
- (a) Your name, invoice date and invoice number;
  - (a) Change Order number, if applicable;
  - (a) Details of Service performed;
  - (a) Time and service rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
  - (a) Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);
  - (a) Mailing address and the person to whom payment is to be sent or the banking institution and full account information for payment by wire transfer (unless such information has previously been provided to us); and
  - (a) Your telephone number, fax number and e-mail address.
- 5.7 We shall pay the Fee and/or undisputed invoices thirty (30) days in arrears. We may dispute an invoice within thirty (30) days of receipt, however, we reserve the right to dispute payments, made on an invoice at any time if it suspects fraud or willful misconduct on your part (“**Faults**”). In the event that any Faults are discovered in



- relation to payments made to you, we reserve the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.
- 5.8 Your failure to submit a proper invoice in a timely manner may result in a delay in payment by us. You agree that we are not responsible, nor will we be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with your obligations under this Agreement.
- 6. Expenses**
- 6.1 Neither you, nor the Representative, are allowed to incur Expenses associated with the provision of the Service without having received our prior written consent. You shall be liable for all Expenses not prior approved.
- 6.2 If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.
- 6.3 While performing the Service in or from Bermuda, the Representative may require accommodation. In the event that accommodation is required, we may assist you or the Representative in acquiring accommodation but we shall not be liable to pay for such accommodation. You shall be liable for all Expenses and utility fees (including water, telephone and other charges) incurred by residing or otherwise staying at a property of your own choosing. You agree to abide by the rules and regulations of the property owner and you shall indemnify us against any losses the property owner may suffer as a result of your or the Representative, residing or staying at that property.
- 6.4 Except for the Fee and any approved Expenses, no other amounts are payable to you. We may set off any amounts owed by you to us against any Fees or Expenses.
- 6.5 We shall pay the Fee and approved Expenses by direct transfer into your bank account. It is your responsibility to inform us of your current contact and bank details
- in order that we can contact and make payment to you.
- 6.6 Without prejudice to Section 5.1, we reserve the right to refuse to pay an invoice in the event that the invoice is presented six (6) months after the time when it should have been presented for payment.
- 7. Taxes**
- 7.1 You shall be responsible to register with the appropriate department of the Government in order to pay for all taxes associated with the provision of a Service, including but not limited to payroll tax and social insurance contributions (“Taxes”) and you consent to us deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your Tax numbers shall be out in Schedule 1.
- 7.2 In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due to us such as any Taxes and all other receivables to us, prior to you receiving your final payment. In the event that you do not provide proof in writing, we shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Fee.
- 8. Representations and Warranty**
- 8.1 You represent and warrant that you and the Representative, will perform all activities relating to the Service:
- in accordance with Best Industry Practice and in a professional and lawful manner;
  - if applicable, using appropriately skilled and experienced Representatives whose identity, address and right to live and work in Bermuda and (to the maximum extent permissible) whose absence of relevant criminal records has been verified;
  - in strict accordance with the standards and timelines set out in Schedule 1 or Appendix 1, free of defects, errors or faults, in order to meet the Objectives of this Agreement; and
  - in accordance with applicable law including PIPA, rules, regulations and guidelines or policies provided by us.





- 8.2 You represent and warrant that:
  - (a) upon installation, the Equipment will be compatible with existing equipment and software on our systems and the Equipment will meet all the technical documentation and requirements required to operate the Service in accordance with our requirements and objectives; and
  - (b) you have the right to license all intellectual property rights in a Service, Software and Documents, to us.
- 8.3 You represent and warrant that you are not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on your ability to perform your obligations and you will notify us immediately if you have any actual or potential conflict of interest which might affect your ability to provide the Service.
- 8.4 You represent and warrant that this Agreement is executed by you or by your duly authorized Representative and that you have obtained all required authorizations and capacity in order that you can fulfill your obligations.
- 8.5 You declare that you are in possession of all Consents necessary for the provision of a Service and you will maintain such Consents at all times while providing the Service.
- 8.6 You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to us and provide copies of such warranties or guarantees.
- 8.7 You declare that all payments to us, including but not limited to, taxes and social insurance, are current.
- 8.8 You shall provide information or sign any other agreements necessary or as requested by us, in order that either you or we can fulfill their obligations under this Agreement.
- 8.9 You represent and warrant that you are that a Service does not infringe or misappropriate any patent, copyright, trade secret or other intellectual property

right of a third party or breach of any law applicable to it.

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

**9. Remedies**

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



- (a) repair, replace or otherwise fix the Service where the Equipment is damaged as a result of your, or the Representative's negligence, error, omission or willful misconduct; or
- (a) obtain the Service from another service provider and terminate this Agreement.

**10. Progress Report**

- 10.1 If required, you shall submit progress reports in connection with the Service ("**Report**") on at least a monthly basis, or as we may require. The Report shall include a summary of the activities and accomplishments during the previous reporting period.
- 10.2 The Report will also include year-to-date totals for payments received and work completed (expressed in BMD\$).
- 10.3 Any decisions and/or actions required of us during the upcoming reporting period(s) should be included in the Report. The specified date for submission of the Report for the reporting period shall be determined by us.

**11. Inspection and Approval of Service**

- 11.1 We shall at all times retain the right to inspect a Service provided by you or the Representative and you consent to visits to your premises in order to inspect a Service or Documents and we shall have the right to review, require correction or additional follow up, if necessary, and accept or reject the Service and any Documents submitted by you or the Representative.
- 11.2 You shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to us within seven (7) days of notification or a later date if extended by us. In the event that you are required to implement changes with respect to your performance of Service, such change shall be implemented within a reasonable time, as determined by us, in consultation with you.
- 11.3 Your failure to proceed with reasonable promptness to make necessary corrections shall be a default. If your corrected performance or written work product

remains unacceptable, we may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with a Service, to reflect the reduced value of a Service received.

**12. Time of the Essence**

- 12.1 You are responsible for managing time in order to complete your obligations under this Agreement and shall complete any portion or portions of a Service in such order as we may require rather than providing a Service during a specified amount of time. You recognise that providing the Service outside of Business Days may be necessary in order to fulfil your obligations and responsibilities without additional compensation of any kind.
- 12.2 We shall give due consideration to all Documents submitted by you or the Representative, and shall make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the progress of the Service.

**13. License**

- 13.1 You grant us a License for the Software and Documents, to enable us to use Equipment and a Service.
- 13.2 You retain title and property rights to the Software. Unless specifically stated in the Agreement, we neither own nor will acquire any right of ownership to any Software or Equipment, including, but not limited to, copies, and any related patents, copyrights, trademarks, or IP addresses assigned to you.
- 13.3 The License granted herein includes all major releases, updates or upgrades of Software.
- 13.4 You shall ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.
- 13.5 In the event you are not able to support Software update, upgrade, version or new release that changes major functionality and is not compatible with the Equipment or a Service, you shall use your best efforts to resolve such issues and to provide



- optimal functionality of the Equipment or the Service.
- 13.6 If required by us, you shall maintain and keep current human and computer readable copies of the Source Code and you shall provide us with copies of all Source Code.
- 14. Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity**
- 14.1 Indemnity: You shall indemnify, keep indemnified and defend us against:
- (a) any Claim or Loss arising from any breach of this Agreement by you or the Representative; or
  - (b) any Claim or Loss arising from a third party as a result of negligent act, errors, omission or willful misconduct by you or a Representative.
- 14.2 We may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.
- 14.3 If the use of a Service is enjoined as a result of a Claim or Loss, in addition to the indemnity set forth above, you shall (at your Expense): (i) obtain for us the right to use the infringing Service; (ii) modify such Service or Software in a manner that does not infringe any third party intellectual property rights; or (iii) substitute equivalent software or a service that are acceptable to us and does not infringe any third party intellectual property rights.
- 14.4 No Liability: In no event shall we or a Public Officer be liable to you for Loss.
- 14.5 Limitation of Liability: Without limiting the provisions of this Section, either party's maximum aggregate liability to the other party, for all Claims or Loss in connection with this Agreement or the performance thereof arising during its entire term shall be limited to the Fee paid to you under this Agreement for the six (6) months immediately preceding the date the on which the latest Claim or Loss first arose, or the coverage limits of any insurance policy that may be required to respond to a Claim or Loss, whichever is the greater.
- 14.6 Nothing in this Agreement shall exclude or limit any liability for wrongful use of Confidential Information, misrepresentation, fraud, willful misconduct or any liability which cannot be lawfully limited or excluded and you shall accordingly maintain in full force and effect during the Term, the Insurance Policies.
- 14.7 All Claims against us must be commenced in court within one (1) year after the cause of action has accrued or the act, omission or event occurred from which the Claim arises, whichever is earlier, without judicial extension of time, or said Claim is barred, time being of the essence.
- 14.8 Insurance: If required, you shall maintain Insurance Policies in the minimum amounts set forth in Schedule 1. The Insurance Policies shall be evidenced by delivery to us of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide us with acceptable proof of insurance shall entitle the Government to either obtain or maintain the Insurance Policies on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other rights or remedies in connection we have under this Agreement.
- 14.9 You shall be responsible for the payment of all deductible amounts on the Insurance Policies and upon our request, you supply us with copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 14.10 In the event that you have not paid Insurance Policy premiums, upon signing this Agreement, you consent to the Government either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on your behalf and recouping such payment from you, at our sole discretion.
- 14.11 At our sole option, all monies payable under the Insurance Policies shall be applied in making good or recouping





- expenditure, loss or damage suffered or incurred by us as a result of you or a Representative providing a Service.
- 14.12 You shall notify us forthwith of any changes to any of the Insurance Policies, or of any claims or potential claims which have arisen to which the insurer(s) of the above policy or policies may be required to respond.
- 14.13 The policy clause "*Other Insurance*" or "*Excess Insurance*" shall not apply to any insurance coverage currently held by The Government of Bermuda, or to our Self-Insured Retentions of whatever nature.
- 14.14 If you subcontract any Service, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated herein.
- 14.15 The insurance requirements set forth in this Agreement do not in any way limit the amount or scope of your liability under this Agreement. The insurance coverage amounts indicate only the minimum amounts of insurance coverage that we are willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 14.16 **Waiver of Rights of Recovery:** You hereby waive all rights of recovery against us which you may have or acquire because of deductible clauses in or inadequacy of limits of the Insurance Policies or any policies of insurance that are secured and maintained by you.
- 14.17 **Force Majeure:** Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay is caused by flood, fire and other event beyond its reasonable control (not caused by its own act or negligent omission) ("**force majeure**") but each party shall use its best efforts to perform its obligations notwithstanding the force majeure event.
- 14.18 **Business Continuity:** Where applicable, you shall maintain, test and where appropriate implement business continuity procedures to reduce the risk of force majeure impacting the provision of the Service and upon request, provide such evidence to us.
- 15. Non-Solicitation**  
During the Term and for a period of twelve (12) months after expiration or termination of this Agreement, you shall not solicit (whether directly or indirectly) any of our employees or consultants who was involved in the performance or receipt of a Service, unless otherwise agreed to in writing by us.
- 16. Non-Disclosure of Confidential Information**
- 16.1 You must ensure that all Confidential Information held by you is protected against unauthorized access, use, copying or disclosure. You acknowledge that the improper use, copying or disclosure of such information could be unlawful.
- 16.2 You will comply with our instructions if you have access to personal data as a result of providing the Service.
- 16.3 You may disclose information related to this Agreement to your personnel on a '*need to know*' basis as required for the performance of the Service. You will keep strictly confidential any other Confidential Information and you shall only use such Confidential Information as required for providing a Service (and no other purpose).
- 16.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause us irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, that we will, without prejudice to any other rights or remedies that it may have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, to seek an injunction or specific performance together with all other remedies as may be available in law or equity.
- 16.5 If either you or a Representative fail to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and you shall pay us the equivalent of the Fee



- paid to you for a three (3) month period as liquidated damages, in addition to any attorney's fees and costs of enforcement. You and the Representative shall be jointly and severally liable to us under this section.
- 17. Ownership, Intellectual Property and Copyright**
- 17.1 We shall own all Documents provided in accordance with this Agreement.
- 17.2 Intellectual Property: You represent and warrant to us that you or the Representative have created the Documents for and on our behalf or have obtained a written and valid Consent and assignment of all existing and future intellectual property rights in the Documents.
- 17.3 Documents created under this Agreement shall be original works created by you or the Representative and shall:
- (b) not include intellectual property owned by or licensed to a third party except for intellectual property which you have the right to use (including the right to use such intellectual property for the purposes of this Agreement); and
  - (b) not subject us to any claim for infringement of any intellectual property rights of a third party.
- 17.4 You shall do all things necessary to assign to us all existing and future intellectual property rights in the Documents embodying such rights to the fullest extent permitted by law. Insofar as they do not so vest automatically by operation of law or under this Agreement, you shall hold legal title in such rights on trust for us.
- 17.5 You agree that all Documents and other works created in full or in part by you or a Representative for the Service may be maintained, changed, modified and/or adapted by us without the consent of either you or the Representative. Notwithstanding the foregoing, you and us may agree in writing that certain identified Document's or designated intellectual property rights will remain with you.
- 17.6 Copyright: Documents and a Service and corresponding copyright and other intellectual property in the Documents shall belong us, which may utilise those Documents freely (including by adapting, publishing and licensing).
- 17.7 Documents or Confidential Information may not be used or copied for direct or indirect use by you or a Representative after expiry or termination of this Agreement without our express written consent.
- 17.8 We acknowledge that you and the Representative possess knowledge and expertise relating to the subject matter of a Service ("**Supplier Know-How**"), which may include intellectual property rights in certain pre-existing tools and materials used by you in performing a Service. Nothing in this Agreement is intended to transfer us any rights in the Supplier Know-How, which shall remain your property.
- 17.9 To the extent that any Supplier Know-How is included in any Documents and you hereby grant to us a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.
- 17.10 Government logo: You may not use Government's name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.
- 18. Term, Termination and Suspension**
- 18.1 This Agreement shall be effective from the Effective Date for the Term. The Service shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.
- 18.2 You shall not commence any additional service in the event of notification of termination of this Agreement, however, in the event that service is provided to us beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon twenty-four (24) hours



- prior written notice by either party to the other.
- 18.3 Either party may terminate a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Schedule 1.
- 18.4 We may terminate this Agreement at any time based upon your default of your obligations under this Agreement. We, in our sole discretion, may provide you with a notice to cure (“**Cure Notice**”) the breach that would otherwise amount to a basis to terminate this Agreement as a result of your failure to fulfill your obligations hereunder. You shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and you shall either cure the specified breach or provide assurances to cure the same which we, in our sole discretion, deem adequate.
- 18.5 Either party may terminate this Agreement immediately, if the other party:
- (a) commits an irremediable breach; or
  - (b) is subject to a change of control or chooses to discontinue its business; or
  - (c) if the other party has a lack of funding or becomes or is deemed insolvent; or
  - (d) if the other party’s performance is affected by a force majeure event which lasts seven (7) days or more.
- 18.6 In the event of termination of this Agreement, all Fees then due and payable shall be paid to you.
- 18.7 Upon expiry or termination of this Agreement, you shall return all Government property or information or you shall irretrievably delete, as commercially practicable as possible, all Confidential Information, stored in any way using any device or application and all matter derived from such sources which is in your possession, custody or power and provide a signed statement that you have fully complied with your obligations under this section, save for any back-up required by law or as required in accordance with your record retention policy.
- 18.8 Upon expiry or termination of this Agreement, you shall provide us with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to us including assisting with the transfer of Data.
- 18.9 We may temporarily suspend a Service hereunder and shall confirm such instruction in writing to you.
- 18.10 Upon any such suspension, we shall pay all Fees and Expenses up until the time of such suspension of a Service. If, following suspension of a Service, there is no resumption within six (6) months, this Agreement may be terminated by you, and us shall make a payment of all outstanding Fees and Expenses in accordance with this Agreement if such amounts are due.
- 18.11 We may issue a written order to resume the provision of the Service within six (6) months of suspension in accordance with the terms and conditions of this Agreement.
- 18.12 The rights arising under this termination section represent your sole remedy and excludes common law rights to terminate and claim damages for any Loss you may suffer under this Agreement.
- 19. Data use and Transfer**
- 19.1 Upon our request and prior to or within sixty (60) days after the effective date of termination, you will make available to us a complete and secure (i.e. encrypted and appropriately authenticated) file of Data in a format to be agreed at the time including all schematics and transformation definitions and/or delimited text files with documented, detailed schematic definitions along with attachments in their native format.
- 19.2 You will be available throughout this transfer of Data period to answer questions about all elements of the Data transfer process so that we may fully access and utilize the transferred Data.
- 19.3 If required, you shall manage the transfer of all Data and technical assets to a service provider of our choice, at your Expense.
- 19.4 You shall guarantee that the Source Code shall be fully source controlled with a complete history of all changes. The



Source Code shall adhere to professional standards in terms of quality and organisation where necessary to allow our personnel to access and use the Source Code.

## 20. General

- 20.1 Any notice or other communication required to be given under this Agreement shall be duly given or served if it is in writing (for the purposes of this section, a notice shall be deemed to be in writing if it is in the form of a printed or hand-written letter or other document, or in the form of an e-mail message), signed and delivered by hand or sent by prepaid recorded post to the address of the party as first set out above (or such other address as is notified in writing to the other party from time to time); or sent by e-mail to the e-mail address of the party as provided by that party (or such other e-mail address as is notified in writing to the other party from time to time).
- 20.2 Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.
- 20.3 This Agreement together with any documents referred to in it supersedes, extinguishes and replaces all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral including whether in invoices, emails or otherwise between the parties relating to a Service and is the complete agreement between the parties.
- 20.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 20.5 You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without our prior written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. We may transfer our rights and obligations under this Agreement.
- 20.6 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such.
- 20.7 No one other than a party to this Agreement, their successors and permitted assigns, shall have any right to enforce any of its terms.
- 20.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 20.9 Expiry or termination of this Agreement in any manner shall not release you or a Representative from any liability or responsibility with respect to any representation or warranty. Sections related to indemnification, limitation of liability, non-disclosure of information and intellectual property shall survive termination of this Agreement.
- 20.10 Waiver of any breach of this Agreement must be in writing to be effective and shall not be a waiver of any subsequent breach, nor shall it be a waiver of the underlying obligation. Should any court determine that any provision of this Agreement is not enforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable.
- 20.11 You consent to us processing data relating to you for legal, administrative and management purposes. We may make such information available to those who provide a service to us (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.

## 21. Governance

- 21.1 You will inform us material problems relevant to the delivery of Service.
- 21.2 You agree to provide us (and, if we request in writing, our auditors and competent regulatory authorities) with full information on the provision and delivery of a Service in an open and cooperative way and attend our meetings to discuss the Service and this Agreement. We may disclose any information relating to this Agreement to a regulator or auditor.

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

- 22.1 You will retain any part of, or all, Confidential Information during the Term and following expiry or termination of this Agreement until all appeals processes are complete in the event of any litigation in connection with the Service. We will have full access to and the right to examine any Documents, at any time during this period. We must be notified, in writing, prior to any of the Documents being destroyed.
- 22.2 You shall retain all records pertinent to this Agreement for a period of three (3) years following expiration or termination hereof.
- 22.3 You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Canadian Generally Accepted Accounting Principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Government, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for three (3) years thereafter, we may cause your records to be audited by a duly authorized Public Officer. Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution of the audit or any arbitration or litigation arising hereunder.
- 22.4 We reserve the right to conduct periodic visit your premises to perform audits after the commencement of this Agreement to ensure continued compliance.
- 22.5 Duly authorised Public Officers shall have full access to and the right to examine any Documents and any of the records pertinent to this Agreement, at all reasonable times for as long as such records are required to be retained hereunder.
- 22.6 You shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.

**23. Electronic Communication**

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

**24. Governing law**

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

**25. Dispute Resolution**

- 25.1 Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration. The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments Committee of the Chartered Institute of Arbitrators, Bermuda Branch. The procedure to be followed shall be that as laid down in the *Bermuda International Conciliation and Arbitration Act 1993* and the UNCITRAL Arbitration Rules presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.
- 25.2 The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in accordance with its terms.
- 25.3 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the parties and each





party shall bear its own costs and attorneys’ and witness’ fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.

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

25.5 The arbitration proceedings and the decision shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes.

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

<b>SIGNED</b> by a duly authorised officer for and on behalf of the <b>Government</b>	Signature:
	Print Name:
	Title:
<b>SIGNED</b> by the <b>Supplier</b> or a duly authorised officer for and on behalf of the <b>Supplier</b>	Signature:
	Print Name:
	Title:

**SCHEDULE 1**

This schedule and appendix are incorporated into the Agreement. Capitalised terms used but not defined in this schedule and the appendix will have the meanings given to them in the Agreement.

1. **Objective:** We require the Supplier to provide the Service, as detailed below, in an efficient and cost effective manner, in accordance with this Agreement.

2. **The Government**

<b>Ministry:</b>	THE CABINET OFFICE		
<b>Department:</b>			
<b>Address:</b>			
<b>Government Contact:</b>			
<b>Tel No.:</b>		<b>Mobile No.:</b>	
<b>Email address:</b>			

3. **Supplier and Service specific conditions:**

<b>Supplier Name:</b>			
<b>Address:</b>			
<b>Tel number:</b>		<b>Mobile No.:</b>	
<b>Email address:</b>			
<b>Commencement Date:</b>			
<b>Completion Date:</b>			
<b>Termination Notice Period:</b>			
<b>Fee payable in arrears:</b>			
<b>Special Conditions related to the Fee:</b>			
<b>Payroll Tax #:</b>		<b>Social Insurance No.:</b>	
<b>Insurance Coverage:</b>			

4. **Service provided by the Supplier**



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**APPENDIX 1**  
**Statement of Work**