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**SYSTEMS DEVELOPMENT AGREEMENT**

THIS SYSTEMS DEVELOPMENT AGREEMENT is made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, (the "Effective Date")

BY AND BETWEEN:

(1) **Ministry:** \_\_\_\_\_

**Department:** \_\_\_\_\_

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

(hereinafter called the "Client") of the one part; and

(2) **Company Name:** \_\_\_\_\_

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

(hereinafter called the "Developer") of the other part.

**WHEREAS:**

- A The Client wishes to use the Developer to design, develop, implement and install a computer system for the purpose as set out below to be used by the Client in its operations.
- B The Developer is in the business of the design, development, implementation, installation and marketing of computer systems.
- C The Developer has agreed to draft a statement of work for acceptance by the Client and upon acceptance, to proceed with the development of a computer system for the purpose as set out below in accordance with and subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual agreements below, and intending to be legally bound, the parties hereby agree as follows:

## **1 DEFINITIONS**

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

- 1.1 'Accept' means acceptance by the Client of each portion of an acceptance testing process as set out in the SOW;
- 1.2 'Agreement' means this Systems Development Agreement and includes any statement of works, schedules, appendices or annexes attached in accordance with the obligations or deliverables under this Agreement;
- 1.3 'Application Software' means all the computer programs prepared by the Developer and supplied to the Client in connection with this Agreement;
- 1.4 'Business Days' means Monday to Friday between 9am – 5pm;
- 1.5 'Claims' means any claims, actions, demands, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses);
- 1.6 'Computer Hardware and Systems Software' means all the equipment, Application Software and other software provided by the Developer to the Client pursuant to the SOW;
- 1.7 'Computer System' means all Computer Hardware and Systems Software, Application Software, Office Procedures, and Related Items developed pursuant to the SOW;
- 1.8 'Confidential Information' means the terms of this Agreement as well as any information or data disclosed by one party to the other party 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 relating to proprietary information, business and operational affairs (including Ministerial and Departmental affairs), whether tangible or oral, which upon receipt by the non-disclosing party should reasonably be understood to be confidential, provided, however, that such information or data is provided under or in contemplation of this Agreement.
- 1.9 'Development' means the analysis and programming services provided by the Developer pursuant to this Agreement and the establishment of tables, codes, reference files and editing rules for the Client in relation to a SOW;
- 1.10 'Fee' means any fee(s) or charge(s) to be paid to the Developer for the services provided in accordance with the terms of this Agreement, as amended;
- 1.11 'Further Investigation is Authorised' means both the Client and the Developer have approved a proposed change for further investigation and the Client has agreed any Fees that may be applicable for such investigation;
- 1.12 'Good Industry Practice' means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
- 1.13 'Installation' means the delivery, setting up and configuring of the Computer Hardware and

- System Software and Application Software pursuant to the terms and conditions hereof in accordance with the SOW;
- 1.14 'Materials' means all Systems Software, Application Software, Office Procedures, and Related Items developed pursuant to the SOW;
- 1.15 'Office Procedures' means all office staff, facilities, forms, and manual processes specified by the Developer as required to use the Computer System;
- 1.16 'PCR' means Project Change Request which is the vehicle for communicating any change to the SOW. The PCR must describe the change, the rationale for the change and the effect the change will have on the scope of the project;
- 1.17 'Proprietary Information' means all rights, title and interest, including without limitation, all registered or unregistered (a) copyright; (b) trademark; (c) trade secret; (d) data or database rights; (e) design rights, whether or not capable or protection by patent or registration; (f) rights in commercial information or technical information, including know-how, research and development data and manufacturing methods; (g) patent; and (h) other intellectual property and ownership rights, including applications for the grant of any of the same, in or to such Materials and all other related proprietary rights attached to the Materials (together, with any and all enhancements, modifications, corrections, bug fixes, updates or other modifications thereto and any and all data or information of any kind transmitted by means thereof);
- 1.18 'Related Items' means all information and all manuals, documentation, notes, improvements, modifications and alterations prepared by the Developer and supplied to the Client in connection with this Agreement;
- 1.19 'Response Time' means the elapsed time between the user of the Computer System depressing a key which causes information to be transmitted to hardware used by a user of that hardware and, where a response is required, for the first character of a response to be received at the terminal of the said user;
- 1.20 'SOW' means the statement of work developed pursuant to section 3 below, including any variations thereof;
- 1.21 'Schedule 1' means the schedule which forms a part of this Agreement and contains details of the dispute resolution procedure; and
- 1.22 'Schedule 2' means the schedule containing details of general security procedures.

## **2 INTERPRETATION**

- 2.1 Section and Schedule headings do not affect the interpretation of this Agreement.
- 2.2 Use of the singular includes the plural and vice versa.
- 2.3 Use of any gender includes the other genders.
- 2.4 Any reference to currency is to Bermuda currency.
- 2.5 A reference to this Agreement includes the schedules, annexes and appendices.
- 2.6 Any reference to a law refers to it as may be applied, amended or re-enacted and in force from time to time and includes any subordinate legislation made under it.
- 2.7 Any reference to a document, refers to it as may be amended, supplemented, replaced or novated

and in effect from time to time.

### **3 TIME**

- 3.1 Time is of the essence in the performance of every obligation of this Agreement.
- 3.2 If any action is to be done by either party on a day that is not a Business Day, then it shall be done on the next day that is a Business Day.

### **4 TERM**

This Agreement will take effect from the Effective Date and will continue in full force and effect until all work under the agreed SOW has been completed or this Agreement has been terminated in accordance with its terms.

### **5 STATEMENT OF WORK**

- 5.1 The Developer shall create a SOW for the Development and Installation of the Computer System. The SOW shall include:
- (a) the matters set out in Data Management Application Client 2015/02 dated January 28, 2015;
  - (b) a description of the deliverables and the criteria for acceptance by the Client;
  - (c) a description of the Developer's responsibilities;
  - (d) a description of the Client's responsibilities;
  - (e) a project plan;
  - (f) proposed applicable Fees and/or proposed fees; and
  - (g) any other applicable terms.
- 5.2 Except in circumstances beyond the control of the Developer or variations in the requirements or other instructions of the Client which prevent the Developer from completing the SOW within the time as set out in this Agreement, it is a condition of this Agreement that the SOW be delivered by the Developer to the Client by the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.
- 5.3 Upon delivery of the SOW to the Client, the Client shall, within fourteen (14) days following delivery of the SOW:
- (a) approve the SOW;
  - (b) reject the SOW, in which case the Agreement shall be deemed to be terminated; or
  - (c) request variations to and/or explanations of any aspect or aspects of the SOW.
- 5.4 If the Client makes no request within the time specified under section 5.3 above then the SOW shall be deemed to be approved.
- 5.5 If the Client requests variations to the SOW then, upon reply from the Developer, the same conditions shall apply as in section 5.3 and section 5.4 with the addition that the Client may withdraw such requests for a change in the SOW.
- 5.6 Following agreement between the parties, the terms of the SOW shall be and are hereby imported as terms of this Agreement.
- 5.7 For the avoidance of doubt, time is of the essence for the Developer when providing the

deliverables under the SOW and any other deliverables in connection with this Agreement.

## **6 CHANGES TO THE STATEMENT OF WORK**

- 6.1 The SOW as agreed by the parties shall not be changed except by written agreement as described in Section 6.2.
- 6.2 Following is the process to change the SOW.
- (a) Each party shall designate a person to act as a project manager for the obligations in connection with this Agreement.
  - (b) Any changes to the SOW must be made by using a PCR.
  - (c) The project managers of both parties will review the proposed change and approve it for further investigation or reject it. The Developer will specify any Fees that may be applicable for such further investigation. If the Further Investigation is Authorized, the project managers will sign the PCR that will constitute approval for the further investigation and any applicable Fees. The Developer will invoice the Client for any applicable Fees. The investigation will determine the effect that the implementation of the PCR will have on price, project plan and other terms and conditions of the agreement.
  - (d) A written change authorization must be signed by authorized representatives of both parties to authorize implementation of the investigated changes.

## **7 THE PROJECT**

- 7.1 For the consideration as stated herein, the Developer will build the Computer System in accordance with and subject to the terms of this Agreement.
- 7.2 In building the Computer System, the Developer will be responsible and liable for its own employees and any sub-contractors hired by it.

## **8 OBLIGATIONS**

Each party will provide information or sign any other agreements necessary, as requested by either party, in order that either party can fulfill their obligations under this Agreement.

## **9 WARRANTIES**

- 9.1 Developer warrants that the services will be performed or procured with:
- (a) due care and skill in accordance with Good Industry Practice;
  - (b) all applicable laws;
  - (c) manuals and other guidelines made available from time to time by the Bermuda Government; and
  - (d) in accordance with the terms of this Agreement.
- 9.2 In connection with this Agreement, the Developer will not, and will not attempt to, bribe, corrupt or offer any improper inducement or bribe to any person at any time.
- 9.3 Developer shall provide the services connected with this Agreement and deliver the Materials to the Client, in accordance with this Agreement or within sixty (60) days upon request or as agreed in writing between the parties, Developer shall allocate and maintain sufficient resources to

- enable it to comply with its obligations under this Agreement.
- 9.4 The Developer will inform the Client promptly of all known or anticipated material problems relevant to the delivery of services.
- 9.5 Developer shall meet any performance dates or project milestones specified by Developer. If Developer fails to meet its project milestones, as accepted by the Client, the Client may (without prejudice to any other rights it may have):
- (a) terminate this Agreement in whole or in part without liability to Developer;
  - (b) refuse to accept any subsequent performance of the Developer which Developer attempts to make;
  - (c) purchase substitute services from elsewhere;
  - (d) hold Developer accountable for any loss and additional costs incurred; and
  - (e) have all sums previously paid by the Client to Developer under this Agreement refunded by Developer.
- 9.6 Developer shall:
- (a) before the date on which the Developer are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:
    - (i) the Developer; and
    - (ii) the Materials.
- 9.7 Developer acknowledges and agrees that:
- (a) the Client is entering into this Agreement on the basis that the Materials are accurate and complete in all material respects and are not misleading; and
  - (b) if it considers that the Client is not, or may not, be complying with any of the Client's obligations, it shall only be entitled to rely on this as relieving Developer's performance under this Agreement:
    - (i) to the extent that it restricts or precludes performance of the services by Developer; and
    - (ii) if Developer, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Client in writing.
- 9.8 If any product or service as provided to the Client does not conform to the warranties in this section, Developer shall, at its expense, use its best efforts to correct any such non-conformance or non-availability promptly, or provide the Client with an alternative means of accomplishing the desired performance.
- 9.9 The Developer warrants that the Application Software and all Materials produced by or at the direction of the Developer under this Agreement will not infringe any patent, copyright, trade secret, or other proprietary right of any third party.
- 9.10 The Developer does not warrant uninterrupted or "error free" operation of the Materials but shall use its best efforts to ensure reliable operation of the Materials.
- 9.11 These warranties apply only if the Client uses the Computer System in the manner specified, and only to the current release of the Computer System.

- 9.12 These warranties will have no legal effect if the components of the Computer System are misused, damaged by accident, modified or operated in any other way other than as provided, or if the components are placed in an unsuitable physical or operating environment maintained improperly by the Client or caused to fail by a product for which the Developer is not responsible.
- 9.13 Each party warrants that it has full power and authority to enter into this Agreement and any person signing this Agreement has authority to bind the respective party to this Agreement.
- 9.14 These warranties replace any conflicting statement of limitation of warranty included with component products.
- 9.15 The provisions of this section 9 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by Developer.

## **10 DELIVERY**

- 10.1 When the Computer System operates in conformity with the deliverables described in the SOW, the Developer shall make the Computer System available to the Client. Once available, the Client may Accept the Computer System.
- 10.2 All items which the Developer is to deliver will be delivered to the premises of the Bermuda Government as advised by the Client or a person authorised by the Client.

## **11 OWNERSHIP, SECURITY AND STORAGE OF DATA**

- 11.1 Developer hereby agrees that all Proprietary Information is the exclusive, valuable and confidential property of the Client. At no time will the Developer acquire or retain any rights, title or intellectual property or other ownership rights or interests in or to the Proprietary Information. Developer agrees that neither it nor any of its employees or sub-contractors will:
- (a) modify, reverse engineer or create derivative works based on any Proprietary Information in whole or in part, or rent, lease, store, loan, copy, sell, distribute or provide, directly or indirectly, any Proprietary Information or any portion of the foregoing to any third party; or
  - (b) make or permit to be made any enhancements, modifications, bug fixes, corrections, updates or other modifications to any Proprietary Information other than as permitted by the Client.
- 11.2 The storage of Client data shall not be in a jurisdiction that causes the Client to suffer or incur any loss, damage or other liability.
- 11.3 Developer confirms that it, and shall ensure that its contractors, comply with Schedule 2 attached.
- ## **12 INSURANCE**
- 12.1 Developer shall, during the term of this Agreement and for seven (7) years thereafter and at its own cost:

- (a) effect and maintain in force with reputable insurers approved by the Client the following insurance policies [on terms and conditions approved by the Client] for the payment of a sum up to the amount stated for any claim and in accordance with Good Industry Practice:
  - (i) data protection insurance: \$10 Million;
  - (ii) errors and omissions insurance: \$10 Million;
  - (iii) commercial general liability coverage: \$10 Million; and
  - (iv) provide evidence of such insurance to the Client on request.
- (a) administer the insurance policies and Developer's relationship with its insurers at all times to preserve the benefits for the Client set out in this Agreement;
- (b) do nothing to invalidate any such insurance policy or to prejudice the entitlement of the Client under this Agreement; and
- (c) procure that the terms of such policy shall not be altered in such a way as to diminish the benefit to the Client of the policies as provided at the date of this Agreement.

12.2 Any insurance policy effected and maintained under this section shall name the Client as additional insured and shall:

- (a) waive any right of subrogation of the insurers against the Client and their respective agents, officers and employees;
- (b) be primary and without right of contribution from other insurance which may be available to the Client; and
- (c) prohibit the lapse of or any cancellation or non-renewal of such insurance, without the prior consent in writing of the Client.

### 13 INDEMNITY AND LIMITATION OF LIABILITY

13.1 The Developer shall indemnify and hold the Client harmless from all Claims and all direct, indirect, consequential liabilities (including all taxes, loss of profits, loss of business, depletion of goodwill or similar losses) awarded against, or incurred or paid by, the Client as a result or in connection with:

- (a) any alleged or actual infringement, whether or not under Bermuda law, of any third party's intellectual property rights or other rights arising out of the use or supply of the Materials; or
- (b) any Claim made or sustained against the Client, its employees or sub-contractors or by a third party to the extent that such Claim was caused by, relates to or arises as a consequence of a breach, negligent performance or willful misconduct, failure or delay in the performance of obligations under this Agreement, by the Developer.

13.2 The provisions of this section 13 shall survive termination of this Agreement howsoever arising.

13.3 In the event the Client incurs or suffers other losses or damage ("Losses") other than as set out in this section 13, the Developer's maximum aggregate liability for all Losses arising during this Agreement's entire term shall be limited to the Fees paid to Developer during the term of this Agreement.



- 13.4 Nothing in this section 13 limits either party's liability for death or bodily injury caused by either parties gross negligence, willful misconduct or for fraudulent misrepresentation or any other liability that cannot be excluded or limited as a matter of applicable law.

#### **14 CONFIDENTIALITY**

- 14.1 Each party must hold the other party's Confidential Information in confidence, and use the same degree of care (but not less than reasonable care) to safeguard such Confidential Information as the party uses to protect its own Confidential Information. The parties further agree to disclose the Confidential Information only to its directors, officers, employees, representatives, consultants, and agents (collectively, "Employees") whose services are required in of the objectives of the business relationship between the parties, and to require each of its Employees to comply with the terms of this Agreement. Confidential Information may only be used for exercising rights and fulfilling obligations under this Agreement.
- 14.2 The Developer further agrees that it, its employees and its sub-contractors will use its best efforts to, observe all security regulations in effect from time to time at the Client premises, and will use its best endeavours to comply with Schedule 2.
- 14.3 In the event of a breach or anticipated breach of the confidentiality provisions of this Agreement, the Developer agrees that monetary damages alone may not be an adequate remedy and, accordingly, that the Client 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.

#### **15 PAYMENTS**

- 15.1 The Client will pay the Developer the Fee as set out in the SOW plus associated travel (all air travel, if applicable, will be at economy class) and reasonable expenses, which expenses are to be approved in writing prior to such expenses being incurred, by an authorized person of the Client.
- 15.2 Payment of the Fee is conditional on the performance and delivery milestones as set out in the SOW. In the event that the milestones in the SOW are not met, the Client shall have no obligation to make any payment specified for such milestone until the completion and delivery of that milestone to the satisfaction of the Client.
- 15.3 Any dispute to a Fee must be made by writing to the Client within thirty (30) days of the date that the payment was made otherwise Developer will be deemed to have accepted payment for the services provided in accordance with this Agreement.
- 15.4 The Developer shall be responsible for payment of all taxes associated with this Agreement, including but not limited to, payroll tax or social insurance.
- 15.5 In the event of termination of this Agreement by the Client without cause or completion of a milestone specified in the SOW prior to completion of the next specified milestone, the Client shall pay the Developer the amount due up until the time of termination of this Agreement and any reasonable fees or expenses incurred as a result of development of the Material. No expenses will be paid unless prior written approval has been obtained from an authorized person within the Client.

**16 PAYMENTS ASSOCIATED WITH CHANGES**

The drafting of any changes to the SOW pursuant to section 6.1 shall be invoiced in accordance with the Fees specified in the PCR.

**17 PAYMENT TERMS**

Payment terms are net sixty (60) days from receipt of invoice or as specified in the SOW. In the event of a conflict, the payment terms of the SOW shall prevail.

**18 REPORTS**

Within one month of commencing the work pursuant to the SOW and thereafter at monthly intervals, the Developer will provide the Client with a written report on all aspects of the project.

**19 TERMINATION**

- 19.1 The Client may terminate, in part or in whole, a SOW, any additional schedule, annex or appendix, a service, or this Agreement, upon ninety (90) days prior written notice to the Developer.
- 19.2 Client may terminate this Agreement if the Developer ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of this Agreement), or becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction.
- 19.3 Either party hereto may terminate this Agreement if the other party fails to observe or perform any provision of this Agreement and fails to remedy such breach within thirty (30) days after written notice thereof has been given to the party in breach.
- 19.4 In the event that this Agreement is terminated then, the Developer will promptly return all Confidential Information (or any designated portion thereof), including all copies thereof, to the Client or, if so directed by the Client, destroy all such Confidential Information. Notwithstanding the forgoing, where the Developer is required to retain copies of confidential information in order to comply with law, regulation or bona fide internal record retention policies for legal, compliance or regulatory purposes and to the extent the confidential information is "back-up" on the Developer's electronic management systems or servers, the Developer shall only be required to use commercial reasonable efforts to expunge such confidential information from its systems.
- 19.5 The Developer will also, within seven (7) days of a written request by the Client, certify in writing that it has satisfied its obligations under this section.
- 19.6 Any rights and obligations, which by their nature continue after this Agreement expires or terminates, will remain in effect until such rights and obligations are completed. The terms of this Agreement will also apply to anyone who receives or is assigned rights in the Agreement.
- 19.7 Upon termination of this Agreement, the Developer shall provide Client with all such assistance as may be reasonably necessary in order to terminate the relationship in a manner which causes

the least inconvenience to the Client including assisting with the transfer of data.

## **20 FORCE MAJEURE**

- 20.1 Notwithstanding any other provision in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the party charged with such default including, but not limited to causes such as strikes, lock-outs or other labour disputes, riots, civil disturbances, actions or inaction of Governmental authorities or suppliers, epidemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God, of the public enemy, computer downtime or the default of a common carrier (hereinafter called the Force Majeure Event').
- 20.2 If the Developer is prevented from delivering the Computer System due to the Force Majeure Event, it shall notify the Client of the fact in writing within ten (10) days commencing with the delivery date of any service provided in connection with this Agreement.
- 20.3 If the circumstances preventing delivery are still continuing thirty (30) days from and including the date when the Developer sends such notice, then either party may give written notice to the other terminating the Agreement. Such written notice must be received whilst the Force Majeure Event is still continuing.
- 20.4 If the Agreement is terminated in this way, the Developer shall refund any payment which the Client has already made for milestones which, as a result of the termination, have not been reached.

## **21 DISPUTE RESOLUTION PROCEDURE**

- 21.1 In the event of a dispute, the parties agree to follow the procedure as set out in the attached Schedule 1.

## **22 NOTICES**

- 22.1 Any notice required or permitted by this Agreement shall be in writing, and service shall take effect by one of the following methods:
- (a) delivering notices personally; or
  - (b) by prepaid mail; or
  - (c) by facsimile transmission; or
  - (d) by electronic mail to a party.
- 22.2 Notice shall be deemed to have been given
- (a) in the case of mail - seven (7) days after the date of posting, or
  - (b) in the case of personal delivery - on the date of such delivery, or
  - (c) in the case of other methods - one (1) day after the date of transmission.
- 22.3 Either party may change its contact addresses or numbers by a written notice to the other party given in a manner specified by this section.

**23 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all agreements arrangements and understandings related to the subject matter hereof, whether reduced to writing or not, that may have preceded this Agreement.

**24 AMENDMENTS**

No amendment or modification of this Agreement or any provision of this Agreement shall be effective unless in writing and signed by both parties.

**25 EMPLOYEES AND CONTRACTORS**

Under no circumstances shall the Developer use in the provision of services any sub-contractor or employee unless and until the written consent of the Client has first been obtained.

**26 PUBLICITY**

No party shall issue any press release, publish any circular or issue or release any other public statement or disclose to any person any information, in each case relating to or connected with or arising out of this Agreement or the matters contained herein or any matter ancillary thereto, without the prior written approval of the other party to its contents and the manner of its presentation and publication (such approval not to be unreasonably withheld or delayed).

**27 WAIVER**

No waiver by either party whether express or implied of any provisions of this Agreement or of any breach or default of either party shall constitute a continuing waiver or a waiver of any other provision of this Agreement unless made in writing and signed by the party against whom the waiver would otherwise be enforced.

**28 SEVERABILITY**

If any provision of this Agreement should be held to be invalid in any way or unenforceable, the remaining terms and provisions of this Agreement shall remain in full force and effect and such invalid, illegal or unenforceable term or provision shall be deemed not to be part of this Agreement.

**29 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law for the time being of Bermuda.

*[signature page follows]*

IN WITNESS WHEREOF, the parties, or their duly authorized representatives, have executed this Agreement on the Effective Date.

<b>SIGNED</b> by a duly authorised officer/ representative for and on behalf of the <b>Client</b>	Signature: _____  Printed Name: _____  Title: _____
<b>SIGNED</b> by a duly authorised officer/ representative for and on behalf of the <b>Client</b>	Signature: _____  Printed Name: _____  Title: _____
<b>SIGNED</b> by a duly authorised officer/ representative for and on behalf of the <b>Developer</b>	Signature: _____  Printed Name: _____  Title: _____
<b>SIGNED</b> by a duly authorised officer/ representative for and on behalf of the <b>Developer</b>	Signature: _____  Printed Name: _____  Title: _____



## SCHEDULE 1

### DISPUTE RESOLUTION PROCEDURE

#### 1 Negotiation at First Level

The parties shall attempt to amicably resolve any disagreement or dispute which may arise between them regarding the interpretation, performance of or failure to perform under this Agreement

#### 2 Definition of Issues and Escalation

2.1 If any disagreement or dispute between the parties continues for more than fifteen (15) Business Days, the procedures as set out in section 2.2 and 3 of this Schedule 1 may be invoked by either party (the "Initiating Party").

2.2 The Initiating Party shall send a full written report describing its position and the grounds for its dissatisfaction to the senior manager (or equivalent) of the other party. In the case of Client, this report should be sent to the Director of the Client. Copies of this correspondence should also be sent to either party as requested.

Then:

- (a) the other party shall within seven (7) Business Days of receipt of the information provided by the Initiating Party, provide written response to the Initiating Party, fully describing its position;
- (b) the senior managers of each party, or their designated delegates, shall meet within five (5) Business Days of receiving such response to review the information provided by both parties and attempt to resolve the dispute; and
- (c) if the matter remains unresolved for a further ten (10) Business Days after the meeting of the senior managers in accordance with section 2.2(b) above, the parties shall within a further seven (7) Business Days, convene a meeting between Client's Permanent Secretary and the corresponding senior vice president (or other senior officer) of the Developer responsible for this Agreement, or their designated delegates, to attempt to resolve the dispute.

#### 3 Mediation and Arbitration

3.1 If any dispute has not been resolved by the Permanent Secretary for the Client and the senior officer of the Developer responsible for this Agreement within ten (10) Business Days in accordance with the procedure in section 2 of this Schedule 1 and the parties have not agreed in writing to further negotiation, then, with agreement, the parties may:

- (a) first seek amicable settlement by mediation in accordance with the conciliation provisions of the Arbitration Act 1986, as amended, including a neutral person that is not employed by, and does not usually represent, either party at the time;
- (b) if the parties are unable to agree on the appointment of a mediator within five (5) Business Days or having agreed to a mediator and the parties have not settled the dispute by mediation within twenty (20) Business Days of the appointment of a mediator, or such further period as the parties may agree in writing, submit the dispute to final and binding arbitration in accordance with the provisions of the Bermuda International Conciliation and Arbitration Act 1993, as amended.



3.2 In the case of Mediation or Arbitration:

- (a) the place of any mediation or arbitration shall be in Hamilton, Bermuda, unless the parties otherwise agree to a place elsewhere in Bermuda, or agree to mediation or arbitration by a means of telecommunication.
- (b) in the event that mediation fails, the parties may agree on the appointment of a single arbitrator, but if they are unable to agree on such appointment within five (5) Business Days or such longer period as the parties may agree in writing, the appointment shall be made by the nominating Committee for the time being of the Chartered Institute of Arbitrators Bermuda Branch.
- (c) The arbitrator shall not be the mediator and the mediator shall not assume the role of arbitrator. The language of the arbitration shall be English. The arbitration shall take place in Bermuda in accordance with and subject to the provisions of the Bermuda International Conciliation and Arbitration Act 1993, as amended. The decision and award of the arbitrator shall be delivered within three (3) months of his, her or their appointment, unless otherwise agreed between the parties, and shall be final and binding on the parties and enforceable in any court of competent jurisdiction.
- (d) 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.
- (e) 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.
- (f) In rendering judgment, the mediator or arbitrator(s) may not provide for punitive or similar exemplary damages.
- (g) The dispute proceedings and the subsequent decisions shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decisions unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes.

**4 Matters Excluded from Dispute Resolution Process**

The following matters under this Agreement shall be excluded from the dispute resolution process provided for in this Schedule 1:

- 4.1 a decision by Client or Developer to terminate this Agreement under section 19;
- 4.2 any law suits involving third parties;
- 4.3 any intellectual property claims, whether initiated by third parties or by the parties to this Agreement; and
- 4.4 any applications for injunctions related specifically to the need to protect proprietary information and interest of a confidential nature.

## SCHEDULE 2

### DATA SECURITY SCHEDULE

#### 1. General Security Procedures

- 1.1 Without limiting Developer's obligation of confidentiality as further described herein, Developer represents that it currently has and maintains a written information security plan that complies with applicable laws and regulations and contains safeguards that are designed to, among other things:
- (a) ensure the security, privacy and confidentiality of Client Sensitive Data (as defined below);
  - (b) protect against any anticipated threats or hazards to the security or integrity of the Client Sensitive Data;
  - (c) protect against unauthorized access to or use of the Client Sensitive Data;
  - (d) ensure the proper disposal and deletion of Client Sensitive Data, as further described below; and
  - (e) ensure that all subcontractors of Developer, if any, comply with all of the foregoing.
- 1.2 Developer has designated one or more individuals to be responsible for its information security program. Such individuals shall respond to Client inquiries regarding computer security and be responsible for notifying Client-designated contact(s) if a breach or an incident occurs, as further described herein. Developer represents that it maintains appropriate security measures to protect "Personal Information" consistent with applicable state and federal laws and regulations. "Client Sensitive Data" means all personal information or financial information regarding Client and its personnel, and Client's former, current or prospective partners, clients, customers or personnel. "Personal Information" means all information defined as personal information or personally identifiable information in applicable laws and regulations and any other information relating to an identified or identifiable individual.
- 1.3 Developer conducts formal security awareness training for all personnel and contractors as soon as reasonably practicable after the time of hiring or prior to being appointed to perform work under the Agreement, and annually thereafter. Developer shall retain and make available for Client review, upon fifteen (15) days prior written notice, documentation confirming that the security awareness training and subsequent annual retraining have been completed.
- 1.4 Client shall have the right to review Developer's information security program prior to the commencement of Developer and from time to time during the term of the Agreement upon fifteen (15) days written notice. Client, at its own expense, on an annual basis, with fifteen (15) days written notice, shall be entitled to perform, or to have performed, an on-site audit of Developer's information security program and facilities.
- 1.5 Developer agrees that it will:
- (a) not disclose or use any Client Sensitive Data except to the extent necessary to carry out its obligations under the Agreement and for no other purpose;
  - (b) not disclose Client Sensitive Data to any third party, including its sub-contracted service providers, without the prior written consent of Client and subject to the further





requirements of this Addendum;

- (c) employ administrative, technical and physical safeguards (including reasonable disposal measures) to prevent unauthorized use or disclosure of Client Sensitive Data; and
  - (d) promptly provide such information regarding its privacy and information security systems, policies and procedures as Client may request relating to its due diligence and oversight obligations under all applicable laws and regulations.
- 1.6 In the event of any actual or apparent theft, unauthorized use or disclosure of any Client Sensitive Data, Developer shall immediately commence all reasonable efforts to investigate and correct the causes and remediate the results thereof, and within one (1) working day following discovery of theft or unauthorized disclosure of any Client Sensitive Data, provide Client notice thereof, and such further information and assistance as may be reasonably requested.
- 1.7 Developer shall not transmit any unencrypted Client Sensitive Data over the internet or a wireless network, and shall not store any Client Sensitive Data on any mobile computing device, such as a laptop computer, USB drive or portable data device, except where there is a business necessity and then only if the mobile computing device is protected by Good Industry Practice encryption software that meets all requirements of applicable laws or regulations and which is approved by Client. All backup and archival media containing Client Sensitive Data must be contained in secure, environmentally-controlled storage areas owned, operated, or contracted for by Developer.
- 1.8 The parties acknowledge and agree that any disclosure of Client Sensitive Data will in no way be construed to be an assignment, transfer, or conveyance of title to or ownership rights in such Client Sensitive Data.
- 1.9 If applicable, Developer agrees to comply with the Data Protection Principles of the UK Data Protection Act 1998.