

CONTRACT

between

BRUNEI ENGINEERING, LOGISTICS AND TRAINING
SOLUTIONS SDN BHD

and



for

THE SUPPLY, DESIGN, INSTALLATION, IMPLEMENTATION,
COMMISSIONING, MAINTENANCE AND SUPPORT

OF

IT SYSTEMS AND INFRASTRUCTURE REFRESH PROJECT

REFERENCE: BELTS/IT/2024/1

Table of Contents

1. DEFINITIONS AND INTERPRETATION..... 4

2. SCOPE OF PROJECT 8

3. IMPLEMENTATION PLAN AND EXTENSION OF TIME 9

4. PAYMENT 9

5. LIQUIDATED DAMAGES 10

6. SOFTWARE AND SYSTEM DOCUMENTATION 11

7. SYSTEM 11

8. DELIVERY, INSTALLATION AND DELAYS 12

9. SYSTEM ACCEPTANCE TESTS..... 12

10. SYSTEM ACCEPTANCE 13

11. RISK AND TITLE 13

12. DEFECTS WARRANTY PERIOD 13

13. CHANGE CONTROL: SYSTEM AND SERVICES 15

14. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS 15

15. SOFTWARE LICENCE AND DOCUMENTATION 16

16. USE, ADAPTATION AND TRANSFER OR REPRODUCTION OF LICENSED SOFTWARE..... 16

17. SUPPORT SERVICES 17

18. SUPPLIER PERSONNEL: SYSTEM AND SUPPORT SERVICES 17

19. PROJECT MANAGEMENT 17

20. CONFIDENTIALITY 18

21. WARRANTIES..... 19

22. INDEMNITY 20

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY 20

24. LIMITATION OF LIABILITY 22

25. INSURANCE..... 22

26. ASSIGNMENT 23

27. GIFTS 23

28. DURATION 23

29. TERMINATION 23

30. INADEQUACY OF DAMAGES..... 26

31. FORCE MAJEURE 26

32. VARIATION 27

33. WAIVER..... 27

34. RIGHTS AND REMEDIES..... 27

35. SEVERABILITY 27

36. ENTIRE AGREEMENT 27

37. CONFLICT 28

38. STATUS OF THE SUPPLIER 28

39. NO PARTNERSHIP OR AGENCY 28

40. NOTICES..... 28

41. COUNTERPARTS	29
42. DISPUTE RESOLUTION.....	29
43. GOVERNING LAW	29
Schedule 1 – Particulars of Contract	30
Schedule 2 – Supplier Hardware and Software	31
Part A: Supplier Hardware	31
Part B: Supplier Software.....	31
Part 1 Supplier Standard Software	31
Part 2 Third Party Software	31
Part 3 Documentation	31
Part 4 Supported Software	31
Schedule 3 – Customer Hardware and Customer Software.....	32
Part A: Customer Hardware	32
Part B: Customer Software	32
Schedule 4 – Services and Site(s).....	33
Part A: Services	33
Part 1 Implementation and Related Services	33
Part 2 Support Services	33
Part B: Site(s).....	33
Schedule 5 – Price, payment and liquidated damages.....	34
Part A: Price	34
Part B: Payment Schedule (including Scheduled invoice dates) and address for invoices.....	34
Part C: Support Charges.....	34
Part D: Liquidated Damages	34
ANNEX A – Business Requirements	36
ANNEX B – Technical Specification	36
ANNEX C – Implementation Plan	36
ANNEX D – Hardware Installation Test Plan.....	36
ANNEX E – Not In Used	36
ANNEX F – Acceptance Tests.....	36

THIS CONTRACT is made on the _____ day of _____, 20

BETWEEN

(1) **Brunei Engineering, Logistics And Training Solutions Sdn Bhd** (RC00002742), a private limited company incorporated under the Companies Act (Cap. 39) of the Laws of Brunei with its registered office situated at 6th Floor, Setia Kenangan Office Block, Setia Kenangan Complex, Kg Kiulap, Bandar Seri Begawan, BE1518, Negara Brunei Darussalam (hereinafter referred to as the “**Customer**”); and

[Supplier Company Name]

(2) the party specified in **Item 1 of Schedule 1 – Particulars of Contract** (the “**Supplier**”).

The Customer and the Supplier are collectively referred to as the “**Parties**” and individually as the “**Party**”.

WHEREAS:

- A. The Customer has invited tenders for the Project based on the Business Requirements (as hereinafter defined).
- B. The Supplier has bid for and its tender for the Project has been accepted by the Customer.
- C. The Parties are now desirous of documenting the terms upon which the Project shall be implemented.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract, unless inconsistent with the context or otherwise specified, the following definitions shall apply:

1.1.1 “**Acceptance Date**” means the date on which the Provisional Acceptance Certificate is issued by the Customer;

1.1.2 “**Acceptance Tests**” means the tests of the System after installation annexed as **ANNEX F – Acceptance Tests**;

1.1.3 “**Applicable Laws**” mean all applicable statutes, orders, regulations, by-laws, ordinance and other delegated legislation and any rule of common law or equity and any regulations, directives, statutory guidelines and instruments from time to time in force in [Brunei Darussalam] including any consolidations, amendments, re-enactments or replacements of any of them and including any act, measure, direction or notice lawfully issued by an authorised government agency or authority;

1.1.4 “**Business Hours**” means the period from 7:00 am to 7:00 pm on Mondays to Saturdays;

1.1.5 “**Business Requirements**” means the specification agreed between the Customer and the Supplier which sets out the Customer's business requirements regarding the System, contained in **ANNEX A – Business Requirements** ;

1.1.6 “**Commencement Date**” is deemed to be the date as set out in **Item 3 of Schedule 1**

– Particulars of Contract;

- 1.1.7 “**Completion Date**” is the estimated date specified in the Implementation Plan by which the Supplier is to provide the System Ready for Service;
- 1.1.8 “**Computer Hardware**” means the computer hardware or device used by the Customer to operate the Licensed Software;
- 1.1.9 “**Confidential Information**” has the meaning given in **Clause 20** (Confidentiality);
- 1.1.10 “**Contract**” means these terms, the Schedules and Annexes attached hereto (as may be amended, modified, varied and/or supplemented thereto from time to time) and includes any document which by reference in the Schedules, Annexes or this Contract or which the Parties hereto have agreed in writing to be a Schedule or Annex to be annexed hereto and be incorporated into this Contract and includes any amendments, modifications and/or supplements thereto made from time to time;
- 1.1.11 “**Customer Hardware**” means the computers and other equipment to be supplied by the Customer in conjunction with the Supplier Software, as specified in **Schedule 3 – Customer Hardware and Customer Software**;
- 1.1.12 “**Customer Representative**” means a person duly authorised by the Customer to act on its behalf for the purposes of this Contract, and identified to the Supplier by written notice from the Customer;
- 1.1.13 “**Customer Software**” means the software programs to be supplied by the Customer as specified in **Schedule 3 – Customer Hardware and Customer Software**;
- 1.1.14 “**Cybersecurity Requirements**” means all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions, applicable to either Party and relating to security of network and information systems and security breach and incident reporting requirements, all as amended or updated from time to time;
- 1.1.15 “**Defect(s)**” means any discrepancy, error, defect or omission in any aspect of System and/or the Services (as applicable) causing the same to be unfit for purpose or unsuitable to fulfil the Business Requirements and/or the terms of this Contract;
- 1.1.16 “**Defects Warranty Period**” has the meaning assigned to it in **Clause 12.1** (Defects Warranty Period);
- 1.1.17 “**Dispute Resolution Procedure**” means the procedure for dealing with disputes under this Contract as set out in **Clause 42** (Dispute Resolution);
- 1.1.18 “**Documentation**” means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Supplier as specified in **Schedule 2 – Supplier Hardware and Software**;
- 1.1.19 “**Final Acceptance Certificate**” means the certificate issued by the Customer in accordance with **Clause 10.2** (System Acceptance);
- 1.1.20 “**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;
- 1.1.21 “**Hardware**” means the Computer Hardware and the Supplier Hardware;

- 1.1.22 “**Hardware Delivery Date**” is the estimated delivery date specified in the Implementation Plan, on which the Supplier will deliver the Supplier Hardware to the Site(s);
- 1.1.23 “**Hardware Installation Tests**” means the tests set out in the Hardware Installation Test Plan to be inserted in **ANNEX D – Hardware Installation Test Plan**;
- 1.1.24 “**Implementation Plan**” means the time schedule and sequence of events for the performance of this Contract set out in **ANNEX C – Implementation Plan**;
- 1.1.25 “**Incident**” means any Vulnerability, Virus or security incident which:
- (a) may affect the System;
 - (b) may affect the Supplier's network and information systems such that it could potentially affect the Customer or the System; or
 - (c) is reported to the Supplier by the Customer;
- 1.1.26 “**Installation Date**” means the estimated date by which the Supplier will complete installation of a specified item of Hardware or a Software Module as specified in the Implementation Plan;
- 1.1.27 “**Intellectual Property Rights**” all patents, copyrights, design rights, trade-marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not), and all applications for the same which may now, or in the future, subsist anywhere in the world, including the right to sue for and recover damages for past infringements;
- 1.1.28 “**Licence**” means the licence granted under **Clause 15.1** (Software Licence and Documentation);
- 1.1.29 “**Licensed Software**” means the Supplier Software as specified in **Schedule 2 – Supplier Hardware and Software**, (except the Third-Party Software);
- 1.1.30 “**Mandatory Policies**” means the Customer's business policies as informed to the Supplier from time to time during the Project;
- 1.1.31 “**Mitigate**” means the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the Incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by the Customer in writing in advance, and the terms **Mitigated** and **Mitigation** shall be interpreted accordingly;
- 1.1.32 “**New Release**” means a new release of all or any part of the Supported Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made;
- 1.1.33 “**Price**” means the aggregate price and payments for the Work and the Licence, as specified in **Schedule 5 – Price, payment and liquidated damages**;
- 1.1.34 “**Project Manager**” means the Supplier's employee appointed under **Clause 19** (Project Management) who has overall responsibility for the Work;
- 1.1.35 “**Project**” has the meaning assigned to it in **Item 2 of Schedule 1 – Particulars of Contract**;

- 1.1.36 “**Provisional Acceptance Certificate**” means the certificate issued by the Customer in accordance with **Clause 10.1** (System Acceptance);
- 1.1.37 “**Ready for Service**” means the System has been installed and tested, and has passed the Acceptance Tests under **Clause 9** (System Acceptance Tests);
- 1.1.38 “**Services**” means the services to be provided by the Supplier under this Contract, as set out in **Part A: Services Schedule 4 – Services and Sites**;
- 1.1.39 “**Site(s)**” means the location(s) at which the System is to be installed as specified in **Schedule 4 – Services and Sites**;
- 1.1.40 “**Software Delivery Date**” means the estimated delivery date, specified in the Implementation Plan, on which the Supplier will deliver the Supplier Software to the Site(s);
- 1.1.41 “**Supplier Hardware**” means all the computers and other equipment to be supplied by the Supplier as set out in **Schedule 2 – Supplier Hardware and Software**;
- 1.1.42 “**Supplier Software**” means the Supplier Standard Software and the Third-Party Software if any. References to Supplier Software in this Contract shall be taken to include all subsequent amendments and updates to, and New Releases;
- 1.1.43 “**Supplier Standard Software**” means the software programs proprietary to the Supplier, listed in **Schedule 2 – Supplier Hardware and Software**, which are to be provided to the Customer without modification;
- 1.1.44 “**Support Charges**” means the support charges as specified in **Schedule 5 – Price, payment and liquidated damages**;
- 1.1.45 “**Support Commencement Date**” means the Acceptance Date or such other date as may be agreed between the Parties;
- 1.1.46 “**Support Services**” means the maintenance and support services to be provided by the Supplier under **Schedule 4 – Services and Site**;
- 1.1.47 “**Supported Software**” means those Supplier Software programs listed as Supported Software in **Schedule 2 – Supplier Hardware and Software** and all subsequent amendments and updates to, and New Releases of, such programs;
- 1.1.48 “**System**” means the system consisting of the Supplier Hardware, the Supplier Software, the Tools and the Documentation and includes any New Release;
- 1.1.49 “**Technical Specification**” means the specification of the System contained in **ANNEX B – Technical Specification** and agreed between the Supplier and the Customer to meet the Business Requirements;
- 1.1.50 “**Third-Party Licence**” means the third-party licence terms referred to in **Clause 6** (Software and System Documentation);
- 1.1.51 “**Third-Party Software**” means the software programs proprietary to third parties, listed in **Schedule 2 – Supplier Hardware and Software**, which are to be provided to the Customer without modification;
- 1.1.52 “**Tools**” means any tools and know-how developed and methods invented by the Supplier in the course of, or as a result of, carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work;
- 1.1.53 “**Training**” means the training as specified in **Schedule 4 – Services and Site**, to be

provided by the Supplier as part of the Services;

- 1.1.54 **"Virus"** means any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose;
- 1.1.55 **"Vulnerability"** means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly; and
- 1.1.56 **"Work"** means all the works, duties and obligations to be carried out by the Supplier under this Contract.
- 1.2 References herein to Clauses and Schedules are to clauses in and schedules to this Contract.
- 1.3 The Recitals and Schedules to this Contract shall be deemed to form part of this Contract. The Parties acknowledge that the Recitals and Schedules are true and correct and shall have the same force and effect as if expressly set forth in the body of this Contract.
- 1.4 The headings to the Clauses and Schedules are inserted for ease of reference only and shall not affect the interpretation and construction of this Contract.
- 1.5 Unless the context requires otherwise, words importing the singular include the plural and vice versa, words importing gender include every gender and words denoting person shall include a natural person, company, firm, unincorporated association or any other legal entity whether acting as trustee or not.
- 1.6 Any reference to a working day shall mean a reference to any day other a Sunday or a public holiday in Brunei Darussalam and any reference to a month or year shall mean a month or year reckoned according to the Gregorian calendar.
- 1.7 Any reference to a party in this Contract includes a reference to their successors and permitted assigns.
- 1.8 Any agreement by a Party not to do anything includes an obligation not to permit or suffer that thing to be done by another person expressly or by implication with his authority and under his control.
- 1.9 Unless expressly stated to the contrary, any references to a specific statute include any statutory extension, modification, amendment or re-enactment of that statute and any regulation or orders made under that statute and any general reference to a statute includes any regulations or orders made under that statute.
- 1.10 No rule of construction shall apply in the interpretation of this Contract or any part thereof to the disadvantage of a Party on the basis that such Party drafted or prepared the provision or this Contract.

2. SCOPE OF PROJECT

- 2.1 The Supplier agrees, in consideration of the payment of the Price by the Customer, and in accordance to the Implementation Plan and terms of this Contract to:
 - 2.1.1 grant the Licence;
 - 2.1.2 supply, deliver, design, install, implement, commission, provide maintenance and support for the System;

- 2.1.3 provide the Services;
- 2.1.4 provide the Documentation and Training in relation to the System and/or the Services and
- 2.1.5 carry out all other ancillary services which is required of the Supplier to ensure that the System and/or Services are fit for purpose as intended by the Customer under the Project,

all of which are more particularly described in **Schedule 2 – Supplier Hardware and Software** and **Schedule 4 – Services and Site(s)** of this Contract.

3. IMPLEMENTATION PLAN AND EXTENSION OF TIME

- 3.1 Both Parties shall perform their obligations under this Contract in accordance with the Implementation Plan.
- 3.2 The Supplier shall complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to **Clause 3.3**.
- 3.3 The Supplier shall be given an extension of time for completion of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:
 - 3.3.1 a variation to the System is made at the Customer's request; or
 - 3.3.2 a force majeure event occurs as described in **Clause 31** (Force Majeure); or
 - 3.3.3 a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third party contractors.
- 3.4 If the Supplier is entitled to an extension of time under **Clause 3.3**, it shall give written notice to the Customer not later than **seven (7) days** after the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under **Clause 31** (Force Majeure), shall estimate the probable extent of the delay.
- 3.5 The Customer Representative and the Project Manager shall use best endeavours to agree in writing, signed by both Parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

4. PAYMENT

- 4.1 Subject to the provisions of this Contract, the Customer shall pay the Price to the Supplier and the Supplier shall submit invoices in accordance with **Schedule 5 – Price, payment and liquidated damages**.
- 4.2 The Customer shall pay the Support Charges to the Supplier and the Supplier shall submit invoices in accordance with **Schedule 5 – Price, payment and liquidated damages**.
- 4.3 All invoices issued by the Supplier under or in connection with this Contract shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced and all other relevant documents (including the respective Provisional Acceptance Certificate and/or Final Acceptance Certificate) as may be applicable and required by the Customer.
- 4.4 The Customer shall make payment of each invoice by the due date stated in that invoice or within forty-five (45) days of receipt of the invoice, whichever is later, provided that the relevant invoice is an appropriate and properly issued invoice. The Customer may withhold payment

against any invoice not submitted in accordance with this Contract and shall immediately notify the Supplier in writing of its reason for so doing.

- 4.5 Any payment made by the Customer in accordance with this Contract shall not in any event:
- 4.5.1 relieve or discharge the Supplier from, or otherwise diminish or affect, any of the Supplier's obligations under this Contract;
 - 4.5.2 be construed as an admission or an acceptance by the Customer that any obligations, work or services provided by the Supplier as part of the Project complies with the requirements of this Contract; and
 - 4.5.3 be construed as a waiver by the Customer of, or otherwise compromise or affect, the Customer's rights and remedies under this Contract.
- 4.6 The Price shall be inclusive or deemed to be inclusive of all the Supplier's costs and expense (including any non-Brunei Darussalam taxes thereon) in respect of the Project and/or this Contract and shall be firm and fixed and unless otherwise agreed by the Customer, shall not be subject to any increase except those increases expressly agreed to by the Customer in writing in accordance with this Contract. No extra out of pocket expenses shall be raised or claimed by the Supplier.

5. LIQUIDATED DAMAGES

- 5.1 Time is of the essence in this Contract.
- 5.2 If the Supplier fails to achieve a milestone in accordance with the timelines in the Implementation Plan, the Parties acknowledge that:
- 5.2.1 the Customer shall suffer losses; and
 - 5.2.2 such losses be impossible, complex or expensive to quantify accurately in financial terms;
- and therefore, the Parties agree that the applicable liquidated damages amount is:
- 5.2.3 a genuine pre-estimate of the losses that would be suffered by the Customer resulting from the Supplier's delay or failure in achieving the milestones in accordance with the timelines in the Implementation Plan; and
 - 5.2.4 an appropriate protection of the Customer's interests in relation to the performance of the Project and/or this Contract.
- 5.3 If a milestone is not achieved in accordance with the timelines in the Implementation Plan, the Customer shall be entitled to recover from the Supplier, as liquidated damages and not as a penalty, the rate stipulated in **Part D: Liquidated Damages of Schedule 5 – Price, payment and liquidated damages**.
- 5.4 If the System is not Ready for Service by the Completion Date because of any act or omission of the Supplier or any third party manufacturer of the System, the Supplier shall pay to the Customer for each day after the scheduled Completion Date until the date the System is Ready for Service, the rate stipulated in **Part D: Liquidated Damages of Schedule 5 – Price, payment and liquidated damages** as liquidated damages, and the Supplier agrees that this sum is proportionate when considering the Customer's legitimate interest to avoid any delay in provision of the System Ready for Service.
- 5.5 If the Supplier fails to respond to the notifications and rectify the Defects and/or render the

System fully operational within the resolution time specified in **Schedule 4 – Services and Site(s)**, the Customer may by written notification to the Supplier impose liquidated damages the rate stipulated in **Part D: Liquidated Damages of Schedule 5 – Price, payment and liquidated damages**.

- 5.6 Liquidated damages imposed under this **Clause 5** shall be paid to the Customer in Brunei Dollars not later than **thirty (30) days** from the date of issue of the Customer's written notification to the Supplier informing the Supplier of the liquidated damages payable.
- 5.7 If the Supplier fails to pay the said damages, the Customer may deduct the amount due from any monies due or which may become due from the Customer to Supplier under this Contract to recover the same as a debt due from the Supplier.
- 5.8 Unless the Customer expressly agrees otherwise, any changes to the timelines in the Implementation Plan agreed between the Parties does not affect the Customer's entitlement to liquidated damages already accrued in respect of the period from the original timeline to the date when the change had taken effect.
- 5.9 The obligations of the Supplier under this **Clause 5** shall survive termination or expiry of this Contract, subject to the **Limitation Act (Cap. 14)**.

6. SOFTWARE AND SYSTEM DOCUMENTATION

- 6.1 The Supplier shall carry out the Work with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the System in accordance with the Business Requirements by the Completion Date.
- 6.2 The Supplier shall provide the Third-Party Software (if any) to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound by such licence terms.
- 6.3 The Supplier shall provide the Supplier Standard Software under the terms of this Contract.
- 6.4 The Supplier shall, in a timely manner, provide the Customer with copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the System. Such Documentation may be supplied in electronic form.
- 6.5 The Customer may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the System and for training the Customer's personnel in use of the System. The Customer shall ensure that all Supplier's proprietary notices are reproduced in any such copy.

7. SYSTEM

- 7.1 The Supplier agrees to:
 - 7.1.1 deliver and install the Supplier Hardware and Supplier Software at the Site(s);
 - 7.1.2 integrate the Supplier Hardware, Computer Hardware, Supplier Software and Customer Software to form the System;
 - 7.1.3 carry out, in conjunction with the Customer, the Acceptance Tests; and
 - 7.1.4 provide the System Ready for Service by the Completion Date;
- on the terms and conditions set out in this Contract.

- 7.2 When performing the Services and any Work, the Supplier shall comply with the Customer's reasonable instructions to ensure minimal disruption to the Customer's business operation.

8. DELIVERY, INSTALLATION AND DELAYS

- 8.1 The Supplier shall deliver each item of Supplier Hardware and each Supplier Software to the Site(s) on or before the applicable Hardware Delivery Date or Software Delivery Date for that item.
- 8.2 The Supplier shall supply to the Customer, within a reasonable time before any Hardware Delivery Date or Software Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation of the relevant item of Supplier Hardware or Supplier Software.
- 8.3 The Supplier shall, at its own expense, prepare the Site(s) in accordance with the information provided by the Supplier in advance of each Hardware Delivery Date or Software Delivery Date. The Supplier may request reasonable assistance from the Customer to carry out such preparation.
- 8.4 The Supplier shall complete installation of each item of Supplier Hardware and each Supplier Software at the Site(s) by the Installation Date for that item of Supplier Hardware or Supplier Software
- 8.5 The Customer shall be responsible for ensuring that each item of Computer Hardware and Customer Software is installed and is in working order and available to the Supplier no later than the relevant date specified in the Implementation Plan.
- 8.6 The Supplier shall provide the System Ready for Service on or before the Completion Date.

9. SYSTEM ACCEPTANCE TESTS

- 9.1 The Supplier shall provide to the Customer the user acceptance criteria and test data for the Acceptance Tests for the System which shall conform to Good Industry Practice. The Acceptance Tests shall be carried out by the Supplier to verify and demonstrate that the System meets the Business Requirements.
- 9.2 The Acceptance Tests shall be carried out for the System by the Supplier upon agreed schedule with Customer after installation and shall be run continuously during Business Hours. The Supplier shall give the Customer at least three (3) working days' notice of the start of the Acceptance Tests and permit the Customer to observe all or any part of the testing.
- 9.3 If the System fails to pass the Acceptance Tests, the Customer shall, within three (3) working days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the Defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 9.4 If the System fails to pass any repeated Acceptance Tests within one (1) week from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:
- 9.4.1 to accept the System subject to such change of acceptance criteria, amendment of the Technical Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
- 9.4.2 if the Supplier is unable to correct the Defects within a period of one (1) month from the

commencement of Acceptance Tests under **Clause 9.2**, to reject the System as not conforming to the Contract, in which event the Customer may terminate this Contract.

10. SYSTEM ACCEPTANCE

- 10.1 Provisional acceptance of the System shall be deemed to have occurred on the issuance of the Provisional Acceptance Certificate by the Customer indicating that the System has passed the Acceptance Tests and thereafter is deemed Ready for Service. The Parties agree that such issuance of the Provisional Acceptance Certificate shall not operate as a form of waiver of any claim or right of action which either Party may have against the other in this Contract.
- 10.2 Final acceptance of the System shall be deemed to have occurred on the issuance of the Final Acceptance Certificate by the Customer after expiry of the Defects Warranty Period and provided the Supplier has rectified all Defects in accordance with the provisions of and within the time frame agreed in writing between the Parties. Following issuance of the Final Acceptance Certificate, the Customer shall pay the Supplier the final payment of the Price as stipulated in **Schedule 5 – Price, payment and liquidated damages**.

11. RISK AND TITLE

- 11.1 Risk of the System or any part thereof shall pass to the Customer upon issuance of the Provisional Acceptance Certificate under **Clause 10.1**.
- 11.2 Title to the System shall pass only upon payment of the respective milestone payment attributable the System or part thereof.

12. DEFECTS WARRANTY PERIOD

- 12.1 The defects warranty period for the System shall commence on the date of issuance of the Provisional Acceptance Certificate and shall last the period stipulated in **Item 4 of Schedule 1 – Particulars of Contract** from the date of issuance of the Provisional Acceptance Certificate or such extended duration (hereinafter referred to as the “**Defects Warranty Period**”). For the purposes of this **Clause 12**, a “**Defect**” means any discrepancy, error, defect or omission in any aspect of System and/or the Services causing the same to be unfit for purpose or unsuitable to fulfil the Business Requirements and/or the terms of this Contract.
- 12.2 During the Defects Warranty Period, the Supplier shall render the replacement parts and diagnostic services and any other works and services required to make good all Defects to the System at no cost to the Customer in the manner prescribed below.
- 12.3 Where during the Defects Warranty Period, the System and/or the Services and any part thereof is found to be:
- 12.3.1 defective in either design, materials or workmanship; or
 - 12.3.2 not in accordance with the Business Requirements; or
 - 12.3.3 having been installed, operated, stored and maintained in accordance with the written instruction of the Supplier, fails to function properly or fails to meet any performance requirements;

then, unless it is shown that the foregoing is caused solely by improper use or mishandling on the part of the Customer, the Supplier shall, at its own expense (including for parts, labour and

transportation costs), upon notification from the Customer, forthwith replace or completely repair the same at the Supplier's own costs.

12.4 For the purpose of **Clause 12.3**, the phrase "improper use or mishandling on the part of the Customer" shall include modifications made to the System and/or the Services by the Customer without the written approval of the Supplier but does not include:

12.4.1 modifications made in accordance with or pursuant to Documentations and Training provided by the Supplier;

12.4.2 modifications to the System and/or the Services to enable it to meet the Business Requirements or such additional requirements as may be agreed between the Customer and the Supplier;

12.4.3 routine configuration of the System;

12.4.4 use of approved hardware with the System;

12.4.5 implementation of approved software into the System; or

12.4.6 implementation of software or types of software which the System is intended to work with.

12.5 The Supplier shall not be responsible for any problem arising from or caused by any unauthorised modification (whether by alteration, deletion, addition or otherwise) made to the System or any part of it by persons other than the Supplier without its express prior written consent. The Customer shall not permit any modification in any way to be made to the System or any part of it during the Defects Warranty Period by persons other than the Supplier without the Supplier's prior written consent.

12.6 During the Defects Warranty Period, the Supplier shall respond to the notifications and rectify the Defects and/or render the System fully operational within the resolution time specified in **Schedule 4 – Services and Site**.

12.7 **Notification of Defects**

12.7.1 If during the Defects Warranty Period, the Customer becomes aware of any Defect in the System, the Customer shall notify the Supplier of such Defect(s) by way of a defect notice in the form to be agreed between the Parties.

12.7.2 If during the Defects Warranty Period, the Supplier becomes aware of any Defect in the System which adversely affects, or is likely to adversely affect:

(a) the safety of the System or the safety of any person using the System, the Supplier shall notify the Customer of the Defect within **one (1) working day**; or

(b) the operation or capability of the System, the Supplier shall notify the Customer of the Defect within one **(1) working day**.

12.7.3 The Supplier shall, within **three (3) working days** after a notification under **Clauses 12.7.1 and 12.7.2**, provide the Customer with a report on the nature of the Defect, its cause and effects, the proposed rectification action, and the anticipated duration for the rectification action to be completed subject always to the resolution time specified in **Schedule 4 – Services and Site**.

12.8 **Defect rectifications**

12.8.1 If there is a notification of a Defect under **Clauses 12.7.1 and 12.7.2** during the Defects Warranty Period, the Supplier shall, within the proposed rectification duration specified

in **Schedule 4 – Services and Site** or a further period agreed in writing by the Customer, by repair, replacement, or modification:

- (a) rectify the Defect; and
- (b) rectify any damage or other adverse effect caused to the System to the extent caused by the Defect or the rectification of the Defect,

whether or not the Defect arises out of or as a consequence of a default attributable to the Supplier.

12.8.2 The Supplier shall, except to the extent that the Customer otherwise agrees, bear all costs of, and incidental to, any rectification work performed under **Clause 12.8**, including the costs of any cleaning, removal, disassembly, packing, freight, relevant testing, re-assembly and reinstallation.

12.8.3 If the Supplier fails to rectify a Defect within the period specified in **Schedule 4 – Services and Site** or such period agreed in writing by the Customer, the Customer may by itself or may engage a third party to perform the rectification works and the Supplier shall bear the full costs and expenses incurred by the Customer as a result of the said rectification whether carried out by the Customer itself or by a third party.

12.8.4 If a Defect in any System is rectified in accordance with **Clause 12**, the Defects Warranty Period shall be extended for the duration on which the Defect has rendered the System unavailable for use.

12.8.5 Nothing under this **Clause 12** shall limit or affect:

- (a) the obligations of the Supplier under this Contract; or,
- (b) any other rights or entitlements of the Customer under this Contract or otherwise arising out of or as a consequence of a Defect.

12.9 **Manufacturer and other warranties**

The Supplier shall ensure that the Customer obtains the benefit of any manufacturer, supplier, or other third-party warranty applicable to the System for as long as the System is in use by the Customer.

13. **CHANGE CONTROL: SYSTEM AND SERVICES**

13.1 The Customer may, by giving written notice to the Supplier at any time during the term of this Contract, request a change to the System or the Services.

13.2 Within seven (7) working days of receipt of such notice, the Supplier shall prepare for the Customer a written quote for any increase or decrease in the Price, and of any effect that the requested change would have on the Implementation Plan and Completion Date.

13.3 Within fourteen (14) working days of receipt of the written quote referred to in **Clause 13.2**, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed to such change in writing, specifying, in particular, any changes to the Implementation Plan and Price.

14. **OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

14.1 The Parties agree that, except as expressly provided to the contrary, this Contract does not

transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in the System or the Documentation.

- 14.2 The Intellectual Property Rights in the System, and the Tools shall, at the Commencement Date or (if later) on creation of the rights, vest in the Customer. The Supplier assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Customer.
- 14.3 The Supplier shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Customer may consider necessary or desirable to perfect the right, title and interest of the Customer in and to the Intellectual Property Rights in the Bespoke Software and Tools.
- 14.4 The Supplier shall:
- 14.4.1 procure the irrevocable waiver of all moral rights in the Documentation relating to the System and the Tools to the extent permitted by law;
 - 14.4.2 ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the System and the Tools; and
 - 14.4.3 be responsible for ensuring that written agreements are, subject to **Clause 26** (Assignment), entered into with, and adhered to by, subcontractors engaged in the performance of this Contract and that, unless otherwise agreed with the Customer in writing in advance, the terms of engagement of such subcontractors are consistent with and enable the Supplier fully to comply with the provisions as to System and the Tools set out in this Contract, including this **Clause 14**.

15. SOFTWARE LICENCE AND DOCUMENTATION

- 15.1 The Supplier grants, subject to the terms of this Contract, the Customer the non-exclusive, non-transferable right to use the Licensed Software on the Hardware and the Documentation ("**Licence**") for the following purposes:
- 15.1.1 any activity in the course of the Customer's business operation;
 - 15.1.2 the provision of hardware or software facilities management, support, maintenance, development, disaster recovery, back-up, information processing, network or other services relating to the Supplier Software;
 - 15.1.3 use and storage of data within any database comprised in the Licensed Software and the extraction and reutilisation of data therefrom, and the amendment or merging of the data or database; and
 - 15.1.4 use in connection with any associated or interconnected networks, including the internet or intranet.

16. USE, ADAPTATION AND TRANSFER OR REPRODUCTION OF LICENSED SOFTWARE

- 16.1 The Customer may use the Licensed Software with other software.
- 16.2 The Customer may make such copies of the Licensed Software as are reasonably necessary for use in accordance with this Licence and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.

17. SUPPORT SERVICES

- 17.1 Following the expiry of the Defects Warranty Period and the issuance of the Final Acceptance Certificate, the Supplier shall:
- 17.1.1 make available the Support Services for the System at the charges stated in **Part C: Support Charges of Schedule 5 – Price, payment and liquidated damages**;
 - 17.1.2 supply the Customer with New Releases in machine-readable form together with related amendments to the Documentation no later than such New Releases are generally made available to the Supplier's other customers. The Supplier may make such New Releases available for downloading over the internet and will promptly notify the Customer when such downloads are available. The Supplier shall ensure that each New Release shall comply with the Cybersecurity Requirements, and shall Mitigate any Viruses or Vulnerabilities affecting the Supported Software since the last New Release provided under **Clause 17.1**.
- 17.2 The Supplier shall ensure that support is available by telephone and email and during Business Hours to provide assistance to the Customer in respect of the following:
- 17.2.1 remedying Defects in the System; and
 - 17.2.2 providing advice on the use of the System.

18. SUPPLIER PERSONNEL: SYSTEM AND SUPPORT SERVICES

- 18.1 The Supplier undertakes that its employees and contractors, while at the Site or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer from time to time, and any other reasonable requirements of the Customer. The Supplier shall remove any employee or contractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.
- 18.2 The Supplier shall indemnify the Customer for all loss and damage howsoever arising to the Customer's employees, contractors or property caused by the Supplier's personnel while they are on the Customer's premises.
- 18.3 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, insurance and benefits of its employees. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

19. PROJECT MANAGEMENT

- 19.1 No later than five (5) days after the Commencement Date, the Customer shall notify the Supplier of the name of the person appointed as the Customer Representative.
- 19.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Work and to whom all questions regarding this Contract can be referred. The name and qualifications of the appointed individual shall be notified in writing to the Customer Representative. If the appointed individual is replaced, the Supplier shall consult with the Customer Representative about the identity of a suitable replacement.

- 19.3 The Project Manager shall co-operate with the Customer Representative and shall attend meetings scheduled by the Customer Representative at reasonable intervals to advise and assist the Customer on all matters relating to the Work.
- 19.4 The Supplier shall:
- 19.4.1 take all reasonable steps to maintain continuity in relation to the Project Manager; and
- 19.4.2 to the extent possible, give the Customer reasonable written notice of any proposed holiday or leave of absence to be taken by the Project Manager.

20. CONFIDENTIALITY

- 20.1 For the purposes of this **Clause 20**, "Confidential Information" means all information (whether commercial, financial, technical or otherwise) relating to the disclosing party, its sub-contractors, other Governments and suppliers, disclosed to or otherwise obtained by the recipient party under or in connection with the Project and this Contract and which is designated as being confidential or which is by its nature clearly confidential.
- 20.2 Each Party undertakes in respect of Confidential Information for which it is the recipient:
- 20.2.1 to treat such Information as confidential;
- 20.2.2 not without the disclosing party's prior written consent to communicate or disclose any part of such Confidential Information to any person except:
- (a) only to those employees, agents, sub-contractors and other suppliers on a need to know basis who are directly involved in the Project;
- (b) the recipient's auditors, professional advisors and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the recipient;
- 20.2.3 to ensure that all persons and bodies mentioned in **Clause 20.2.2** are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing party and to use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this **Clause 20**;
- 20.2.4 not to use or circulate such Confidential Information within its own organization except to the extent necessary for the purposes of the Project.
- 20.3 The obligations in this **Clause 20** shall not apply to any Confidential Information:
- 20.3.1 in the recipient's possession (with full right to disclose) before receiving it; or
- 20.3.2 which is or becomes public knowledge other than by breach of this clause; or
- 20.3.3 is independently developed by the recipient without access to or use of the Confidential Information; or
- 20.3.4 is lawfully received from a third party (with full right to disclose).
- 20.4 If a Party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 20.5 This **Clause 20** shall continue in force notwithstanding the termination of this Contract for any

reason.

21. WARRANTIES

21.1 The Supplier acknowledges that the Customer has entered into this Contract in reliance upon the Supplier's expertise in selecting and supplying goods and services fit to meet the Business Requirements.

21.2 The Supplier warrants and represents that:

21.2.1 the Supplier Standard Software and Documentation (and before the vesting and assignment of the same to the Customer under **Clause 14.2** (Ownership), Tools are proprietary to the Supplier (except where otherwise stated in **Schedule 2 – Supplier Hardware and Software**) and that it has the right to license all Intellectual Property Rights in and to the Licensed Software and Documentation to the Customer;

21.2.2 no element of the System supplied by the Supplier, or receipt of any Services, under this Contract infringes the Intellectual Property Rights of any third party;

21.2.3 the System will meet all the requirements of the Business Requirements and comply with the Cybersecurity Requirements;

21.2.4 the System at the Acceptance Date, and until expiry of the Defects Warranty Period, will perform in accordance with the Technical Specification and Business Requirement;

21.2.5 it shall not introduce any Viruses or Vulnerabilities into the System, or onto the Customer's network and information systems while performing the Services;

21.2.6 it will perform the Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent personnel with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements;

21.2.7 it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations, including the Cybersecurity Requirements;

21.2.8 the Customer will receive good and valid title to all deliverables in connection with the Services, free and clear of all encumbrances and liens of any kind;

21.2.9 in respect of New Releases:

(a) no New Releases issued by the Supplier will adversely and materially affect the performance or functionality of the Supplier Software or introduce Viruses or Vulnerabilities into the System or the Customer's network and information systems;

(b) each New Release so issued will be compatible with the Hardware, the Third-Party Software and any other hardware, software and equipment used by the Customer which needs to interface in any way with such New Release; and

(c) the implementation of each New Release will not necessitate the upgrading or replacement of any of the Hardware, the Third-Party Software or such other hardware, software and equipment which at the date of issue of the New Release is interfacing with the earlier release.

21.2.10 the Third-Party Software will:

(a) not introduce Viruses or Vulnerabilities into the System or the Customer's network

and information systems;

- (b) be suitable for the Customer's requirements notified to the Supplier by the Customer in writing before the installation;
- (c) be compatible with the Supplier Software, including such as to enable the Supplier Software to perform in accordance with the Documentation and the Cybersecurity Requirements; and

21.2.11 the Hardware recommended or supplied by the Supplier on or after the date of this Contract will:

- (a) not introduce Viruses or Vulnerabilities into the System or the Customer's network and information systems;
- (b) comply with the Business Requirements and the Cybersecurity Requirements;
- (c) be compatible with the Supplier Software and will be such as to enable the Supplier Software to perform in accordance with the Documentation and the Cybersecurity Requirements; and

21.2.12 the System will not contain any Viruses or Vulnerabilities.

21.3 Each Party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Contract and that those signing this Contract are duly authorised to bind the Party for whom they sign.

21.4 In performing its obligations under this Contract, the Supplier shall comply with:

21.4.1 all applicable laws, statutes, regulations from time to time in force, including the Cybersecurity Requirements; and

21.4.2 the Mandatory Policies.

22. INDEMNITY

22.1 The Supplier shall indemnify the Customer against any losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Customer as a result of the Supplier's breach of this Contract howsoever arising or any negligent or wrongful act of the Supplier, its officers, employees, contractors or agents.

22.2 The Customer has relied on the Supplier's recommendations in deciding to acquire the Third-Party Software and, accordingly, if the Supplier Software does not function in accordance with the Business Requirements as a result of acquisition of the same and requires replacement, the Supplier shall be deemed to be in breach of the warranties under **Clause 21.2** and shall indemnify the Customer against the cost of acquiring any appropriate replacement product and any related services required.

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

23.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim that the use of the System, or receipt of the benefit of the Services, by the Customer infringes third party Intellectual Property Rights.

- 23.2 If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Customer shall:
- 23.2.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 23.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 23.2.3 give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 23.2.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 23.3 If use of the System becomes, or, in the opinion of qualified legal counsel, is likely to become, the subject of any claim of infringement of Intellectual Property Rights, the Supplier may:
- 23.3.1 replace all or part of the System with functionally equivalent software or documentation without any charge to the Customer;
 - 23.3.2 modify the System as necessary to avoid such claim, provided that the System (as amended) functions in substantially the same way as the System or the New Releases (as the case may be) before modification;
 - 23.3.3 procure for the Customer a licence from the relevant claimant to continue using the System,
- and in the case of **Clauses 23.3.1** and **23.3.2** only, the Supplier shall reimburse the Customer all reasonable additional costs and expenses they are required to incur in order to obtain software and hardware required to interact with such modified or replaced software and documentation, and additional services from third parties, all of which would not have been incurred if the System had been non-infringing.
- 23.4 If:
- 23.4.1 the System is determined in a court of law to be infringing;
 - 23.4.2 the Parties are advised by qualified legal counsel that use or possession by the Customer of the System in accordance with this Contract is likely to constitute infringement of a third party's rights; or
 - 23.4.3 an injunction or similar order is granted in connection with a claim of the types referred to in Clause 23.1 which prevents or restricts the use or possession by the Customer of the System in accordance with this Contract;
- and the Supplier is unable, after best efforts, to procure for the Customer the right to continue using the System or to provide the Customer with functionally equivalent non-infringing software, this Contract and the Licence will be terminated, without prejudice to the Customer's

right to seek further remedies, including damages, for any loss or damage arising out of such termination.

24. LIMITATION OF LIABILITY

24.1 Neither Party excludes or limits liability to the other party for:

24.1.1 fraud or fraudulent misrepresentation;

24.1.2 death or personal injury caused by negligence;

24.1.3 any matter for which it would be unlawful for the Parties to exclude liability.

24.2 Subject to **Clause 24.1** and **Clause 24.3**:

24.2.1 the Supplier's total aggregate liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to **one hundred and fifty percent (150%)** of the price paid or payable for the Services.

24.2.2 the Customer's total aggregate liability (other than its liability to pay any sums properly due and payable under this Contract and for which the Customer shall remain fully liable) in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to **seventy-five percent (75%)** price paid or payable for the Services

24.3 The limitations of liability in this **Clause 24** shall not apply:

24.3.1 in the case of liability of the Customer, to liability for damages for any breach by the Customer of:

(a) its payment obligations; and

(b) confidentiality under Clause 20.

24.3.2 in the case of liability of the Supplier, to liability for:

(a) or under any indemnity in this Contract (whether in respect of performance of the indemnity or its breach);

(b) any breach of any regulatory requirement by the Supplier which directly or indirectly results in the imposition of any fine or sanction on the Customer or the Customer otherwise incurring any liability;

24.3.3 any breach by the Supplier of **Clause 14**(Ownership of Intellectual Property Rights), **Clause 20** (Confidentiality), or **Clause 27** (Gifts).

25. INSURANCE

25.1 On signature of this Contract, the Supplier shall provide to the Customer written confirmation from its insurers that it has in force an insurance policy sufficient to provide cover as required by law or in respect of any foreseeable liability which may arise in connection with this Contract including professional indemnity or errors and omissions cover of not less than **one million Brunei Dollar (BND \$1,000,000.00)** per claim or series of related claims per year. The

Supplier shall, at its own expense, maintain such policy in force for the term of this Contract including extension of this Contract term or renewal (if any), and shall provide a certificate of insurance from its insurers of such policy to the Customer at least once during each year of the term of this Contract and, in addition, as reasonably requested by the Customer. Such certificate shall also confirm that the insurance policy may not be cancelled before the expiry of a thirty (30) day notification period and that the Customer will be immediately notified in writing of any such notice of termination.

26. ASSIGNMENT

- 26.1 The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract, provided that it gives prior written notice of such dealing to the Supplier.
- 26.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

27. GIFTS

The Customer shall be entitled to terminate this Contract and recover from the Supplier the amount of any loss resulting from such termination, if the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract with the Customer, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with the Customer or the like acts shall have been done by any person employed by the Supplier or acting on its behalf (with or without the knowledge of the Supplier), or if, in relation to this Contract or any other contract with the Supplier, the Supplier or any person employed by the Supplier or acting on its behalf shall have committed or abetted to commit an offence under the **Prevention of Corruption Act (Cap. 131)** or **sections 161 to 165** or **213 to 215** of the **Penal Code (Cap. 22)**.

28. DURATION

- 28.1 This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with the provisions of this Contract, until the Work has been completed.
- 28.2 The Support Services shall commence on the Support Commencement Date and shall continue until the Support Services are terminated in accordance with the other provisions of this Contract.
- 28.3 The Licence shall commence on the Commencement Date and shall continue in force until termination in accordance with the provisions of this Contract.

29. TERMINATION

- 29.1 Without affecting any other right or remedy available to it, either Party may terminate this Contract with immediate effect by giving written notice to the other Party if:
- 29.1.1 the other Party commits a material breach of any term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) working days after being notified in writing to do so;

- 29.1.2 the other Party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 29.1.3 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 29.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party;
- 29.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party;
- 29.1.6 the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;
- 29.1.7 a person becomes entitled to appoint a receiver over all or any of the assets of the other Party or a receiver is appointed over all or any of the assets of the other Party;
- 29.1.8 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within **fourteen (14) days**;
- 29.1.9 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **Clause 29.1.3 to Clause 29.1.8** (inclusive);
- 29.1.10 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 29.1.11 any warranty given by the other party pursuant to this Contract is found to be untrue or misleading.
- 29.2 Either Party may terminate this Contract in accordance with **Clause 31** (Force Majeure).
- 29.3 The Customer may terminate this Contract with immediate effect by giving written notice to the Supplier:
 - 29.3.1 if the Supplier commits a breach of its obligation in **Clause 21.4** (Warranties); or
 - 29.3.2 if the System is not Ready for Service within thirty (30) calendar days of the Completion Date because of any act or omission of the Supplier or any third party manufacturer or the System. Such termination shall not affect the Customer's right to impose liquidated damages under **Clause 5.4** (Liquidated Damages) and shall be without prejudice to any right to recover money previously paid to the Supplier under this Contract and all other rights or claims that the Customer may be entitled to under this Contract.
- 29.4 The expiry or termination of this Contract (however caused) shall not automatically terminate the Licence. Any provisions of this Contract which relate to the Licence shall remain in full force and effect until the expiry or termination of the Licence.
- 29.5 Other than as set out in this Contract, neither Party shall have any further obligation to the other under this Contract after its termination.
- 29.6 Any provision of this Contract which expressly or by implication is intended to come into or

continue in force on or after termination of this Contract shall remain in full force and effect.

29.7 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

29.8 On termination of this Contract for any reason, each Party shall as soon as reasonably practicable:

29.8.1 return, destroy or permanently delete (as directed in writing by the other Party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other Party containing, reflecting, incorporating or based on Confidential Information belonging to the other Party. If required by the other Party, it shall provide written evidence (in the form of a letter signed by an authorised representative of the other Party) no later than fourteen (14) calendar days after termination of this Contract that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in **Clause 20** (Confidentiality)), provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Supplier Software or to the extent necessary to allow it to make full use of the Services and any rights granted under any Licence or Third-Party Licence which is still in force;

29.8.2 permanently delete any proprietary software belonging to the other Party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other Party. Each Party shall provide written confirmation (in the form of a letter signed by its authorised representative) no later than fourteen (14) calendar days after termination of this Contract that this software has been deleted;

29.8.3 subject to **Clause 29.9**, return all of the other Party's equipment and materials, failing which, the other Party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping,

and any electronic data shall be considered deleted, for the purposes of this Clause 29.8 where it has been put beyond use by the deleting Party.

29.9 On termination of this Contract for any reason, the Supplier shall:

29.9.1 promptly refund such portion of the Price and/or Support Charges (as the case may be) as relates to the period after expiry or termination on a pro rata basis;

29.9.2 as soon as reasonably practicable, deliver to the Customer all drawings, designs, plans, specifications, programs (including source codes) or other documentation, goods and supplies that it has agreed to supply under this Contract and which exist at the date of termination, whether or not complete, subject to the rights of ownership and use agreed in **Clause 14** (Ownership of Intellectual Property Rights). If the Supplier fails to deliver these materials in accordance with this **Clause 29.9** the Customer shall be entitled to enter the premises of the Supplier to take possession of them. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe-keeping;

29.9.3 as soon as reasonably practicable, vacate the Customer's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it. Any goods,

materials or equipment that have not been removed after seven (7) calendar days after termination of this Contract may be disposed of by the Customer as it thinks fit;

- 29.9.4 assist the Customer and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration of the services to the Customer or the replacement supplier. If termination is by the Customer in accordance with **Clauses 29.1, 29.2 or 29.3** such co-operation and assistance shall be provided at no cost to the Customer. In all other cases, the Supplier may charge a reasonable sum to cover the cost of providing such co-operation and assistance;
- 29.9.5 use all reasonable endeavours, at the Customer's request, to assign or novate, whether in favour of the Customer or any alternative supplier, any contract for services between the Supplier and any third party performing any part of the Services and the Supplier shall use its reasonable endeavours to ensure that the contract for services of any individual performing any part of the Services will include a novation or assignment clause allowing the novation or assignment of the contract to the Customer or an alternative supplier;
- 29.9.6 procure that a written record of all Tools shall be delivered promptly to Customer; and
- 29.9.7 verify in writing to the Customer that it has complied with the requirements of this **Clause 29.9**.

30. INADEQUACY OF DAMAGES

- 30.1 Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Contract by the Supplier. Accordingly, the Customer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract.

31. FORCE MAJEURE

- 31.1 Force Majeure means all events beyond the control of the Party claiming Force Majeure which cannot be foreseen or if foreseeable, are unavoidable, which occur after the execution of this Contract, which prevent or hinder the performance of the Parties' obligations under this Contract (or any of them), including but not limited to:
 - 31.1.1 acts of God;
 - 31.1.2 war, hostilities, riot, insurrection or civil commotion, malicious damage, blockades, embargoes, strikes, lockouts and industrial disputes affecting such performance; and
 - 31.1.3 flood, fire, rainstorms and other natural physical disasters, plague or other epidemics or pandemics.
- 31.2 If a Force Majeure event prevents or hinders performance of any of the Party's obligations under this Contract (or any of them), the Party so affected shall:
 - 31.2.1 not be held liable for delay or failure in performing such obligations for so long as Force Majeure continues to affect/prevent performance;
 - 31.2.2 forthwith notify the other Party (giving full details thereof) and within **fourteen (14) working days** from the date of such notice, the Parties shall meet to determine by agreement the consequences. If no agreement is reached within a further period of

forty-five (45) working days and if the circumstances of Force Majeure continue, either Party shall have the right to terminate this Contract by giving written notice to the effect to the other.

- 31.3 A statement in writing by a competent, authoritative, independent body confirming the veracity of a Force Majeure event claimed by either Party shall be accepted as conclusive evidence thereof.

32. VARIATION

- 32.1 No variation to this Contract shall be effective unless in writing and signed by the Parties (or their authorised representatives).

33. WAIVER

- 33.1 A waiver of any right or remedy under this Contract or by any Applicable Laws is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 33.2 A failure or delay by a Party to exercise any right or remedy provided under this Contract or by any Applicable Laws shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by any Applicable Laws shall prevent or restrict the further exercise of that or any other right or remedy.

34. RIGHTS AND REMEDIES

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by any Applicable Laws.

35. SEVERABILITY

- 35.1 In the event that any term or provision or part of a term or provision of this Contract shall be held or determined invalid, unlawful or otherwise unenforceable to any extent, such term or provision or part of a term or provision shall be deemed severed from the remaining terms and provisions of this Contract and the remaining terms and provisions of this Contract shall continue to be valid and enforceable to the fullest extent permitted by law.
- 35.2 If any term or provision or part of a term or provision is deemed severed pursuant to **Clause 35.1**, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

36. ENTIRE AGREEMENT

- 36.1 This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter hereof.
- 36.2 Each Party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

37. CONFLICT

37.1 If any conflict or inconsistency among the various provisions of the Clauses, Schedules or the Purchase Order arises, the inconsistency will be resolved by construing this Contract as a whole and in giving priority to them in the following order:

37.1.1 the Clauses;

37.1.2 the Schedules and Annexes;

37.1.3 the Purchase Order (if any); and

37.1.4 any other document expressly incorporated by reference,

so that the provisions of the higher ranked document, to the extent of the inconsistency, prevails.

38. STATUS OF THE SUPPLIER

38.1 For the purposes of this Contract and the Services to be provided under it, the Supplier shall be, and shall be deemed to be, an independent contractor.

39. NO PARTNERSHIP OR AGENCY

39.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.

39.2 Each Party confirms that it is acting on its own behalf and not for the benefit of any other person.

40. NOTICES

40.1 Any notice, demand, service of process or other communication required or permitted to be given by one Party to the other pursuant to this Contract shall be in writing and delivered by hand, or sent by registered mail to the address specified in **Schedule 1 – Particulars of Contract** (or such other address as the intended addressee has by **five (5) working days** prior written notice specified to the other Party.

40.2 Notices shall be deemed to have been received:

40.2.1 if delivered by hand – at the time of delivery;

40.2.2 if delivered by registered post – **two (2) working days** after the date of mailing;

40.2.3 if sent by email – at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

40.3 A notice shall be deemed to be effective from the time of service or on the notice's effective date, whichever is the later.

40.4 The provisions of this **Clause 40 (Notices)** do not apply to the service of any proceedings or other documents in any legal action.

41. COUNTERPARTS

- 41.1 This Contract may be entered into by the Parties in separate counterparts, each of which when so executed shall be as valid and effectual as if executed as an original, but all counterparts shall together constitute one and the same document.

42. DISPUTE RESOLUTION

- 42.1 The Parties shall make every effort to amicably resolve, by direct informal negotiation, any dispute (including non-contractual disputes or claims arising out of or in connection with this Contract, or its subject matter or formation) ("**the Dispute**") arising between them pursuant to or in connection with this Contract.
- 42.2 If the Parties are unable to amicably resolve any Dispute within thirty **(30) days** from the date when such Dispute arose, either Party may require that the Dispute be referred for resolution by arbitration in accordance with the provisions of the **Arbitration Order, 2009**.
- 42.3 The arbitration tribunal shall consist of a single arbitrator, such person to be agreed between the Parties, or failing agreement, be nominated in accordance with the **Arbitration Order, 2009**. The applicable rules of the arbitration shall be the UNCITRAL Rules of Arbitration.
- 42.4 The seat and place of arbitration shall be Brunei Darussalam and the language of the arbitration shall be English.
- 42.5 All rights and obligations of the Parties under this Contract shall continue in full force and effect pending the final outcome of such arbitration.
- 42.6 Any reference to arbitration under this clause shall be a submission to arbitration within the meaning of the **Arbitration Order, 2009** for the time being in force in Brunei Darussalam.
- 42.7 The application of Part II of the International **Arbitration Order, 2009** and the Model Law referred thereto to this Contract is hereby excluded.

43. GOVERNING LAW

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed with the laws of Brunei Darussalam.

- the rest of this page is intentionally left blank -

Schedule 1 – Particulars of Contract

1.	Supplier	: [•], a company registered under the laws of [insert country] with its registered address at [•] OR [•], a private limited company incorporated under the Companies Act (Cap. 39) of the Laws of Brunei with its registered office situated at [•] OR [•], a business registered under the Business Names Act (Cap. 92) of the Laws of Brunei with its registered office situated at [•]
2.	Project	: The Supply, Design, Installation, Implementation, Commissioning, Maintenance and Support of IT System and Infrastructure Refresh Project.
3.	Commencement Date	: [•]
4.	Defects Warranty Period	: Six (6) months
5.	Notices	: To the Customer: [insert address] Email Address: [insert email] copy to: [Insert name] [insert address] Attention: [insert name], [insert position] Email Address: [insert email] To the Supplier: [insert address] Email Address: [insert email] copy to: [Insert name] [insert address] Attention: [insert name], [insert position] Email Address: [insert email]

Schedule 2 – Supplier Hardware and Software

Part A: Supplier Hardware

Part B: Supplier Software

Part 1 Supplier Standard Software

Part 2 Third Party Software

Part 3 Documentation

Part 4 Supported Software

Schedule 3 – Customer Hardware and Customer Software

Part A: Customer Hardware

Brand	Model
Lenovo	ThinkPad T14s
Dell	Latitude 5540 Latitude 5550 EMC SCv3020
Microsoft	Surface Pro
Fortinet	FortiMail 200F FortiGate 100E FortiSwitch S148EP FortiAP FP221E

Part B: Customer Software

Brand	Product Name	Version
Microsoft	Operating System	Windows 10 Professional Windows 11 Professional
	Productivity Application	Microsoft 365 Business Premium Microsoft 365 F3 Visio Plan 2
SAP	ERP Application	SAP For Windows 770

Schedule 4 – Services and Site(s)

Part A: Services

Part 1 Implementation and Related Services

Part 2 Support Services

Part B: Site(s)

1. BELTS Head Office, Setia Kenangan Complex, Kiulap (Main Data Centre)
2. BELTS Engineering Office, Tapak Perindustrian Salar, Muara (Branch and Disaster Recovery site)
3. BELTS Training, Training Simulation Centre, Penanjong Garrison, Tutong (Branch site)
4. BELTS State Medical Store, Madaras, Rimba (Branch site)

Schedule 5 – Price, payment and liquidated damages

Part A: Price

Part B: Payment Schedule (including Scheduled invoice dates) and address for invoices

Milestone Number	Key Milestones	Percentage of Payment
1	Upon Project Kick off	5%
2	Upon Plan and System Design	5%
3	Upon Delivery of Hardware and Software	30%
4	Upon Implementation (System Build)	10%
5	Upon System Acceptance Sign-Off	20%
6	Upon System Go-Live	20%
7	Upon Completion of Defects Warranty Period	10%

Part C: Support Charges

Part D: Liquidated Damages

The applicable rate of the Liquidated Damages:-

- Pursuant to Clause 5.3 of this Contract:** Rate of **point one percent (0.1%)** of total Contract Price for each day of delay (inclusive of Saturdays, Sundays, and Public Holidays) or part thereof up to a maximum of **ten percent (10%)** of the total Contract Price.
- Pursuant to Clause 5.4 of this Contract:** Rate of **point one percent (0.1%)** of the total Contract Price for each day of delay (inclusive of Saturdays, Sundays, and Public Holidays) or part thereof up to a maximum of **ten percent (10%)** of total Contract Price.
- Pursuant to Clause 5.5 of this Contract:** Rate of **point one percent (0.1%)** of the total Contract Price for each day of delay (inclusive of Saturdays, Sundays, and Public Holidays) or part thereof up to a maximum of **ten percent (10%)** of total Contract Price.

IN WITNESS WHEREOF this Contract has been executed by the authorised representatives of the Parties as of the day and year first above written.

Signed for and on behalf of

Brunei Engineering, Logistics And
Training Solutions Sdn Bhd

Signed for and on behalf of

[•]

.....
Name :

Title :

Witness

.....
Name :

Title :

Witness

.....
Name :

Title :

Date :

.....
Name :

Title :

Date :

ANNEX A – Business Requirements

ANNEX B – Technical Specification

ANNEX C – Implementation Plan

ANNEX D – Hardware Installation Test Plan

ANNEX E – Not In Used

ANNEX F – Acceptance Tests