

**TERMS AND CONDITIONS
FOR THE SUPPLY OF SOFTWARE AND/OR SERVICES**

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1 OBJECT

- 1.1 In consideration of the payment as hereinafter provided, the Contractor shall, upon the terms and conditions hereinafter set forth, supply, deliver, install, test and commission the Software and/or perform the Services to the Company.

2 DEFINITION

- 2.1 In this Contract, the following words and expressions shall have the meaning assigned hereunder except where the context otherwise requires:

Affiliate means an organisation institution or entity that:

- (i) is related to the Company by reason of the Company directly or indirectly controlling the organisation/institution;
- (ii) is related to the Company by reason of the organisation/institution directly or indirectly controlling the Company;
- (iii) is related to the Company by reason of both the Company and organisation/institution being, directly or indirectly, controlled by or under the common control of a third party;
- (iv) the Company is obliged to provide support services to that organisation/institution for any reason; or (v) that is permitted by the Company to use or access the Software.

In the context of corporate entities, a person "controls" the entity if it owns and controls

- (i) more than FIFTY percent (50%) of whose shares or other securities entitled to vote for election of directors (or other managing authority) in the entity, or
- (ii) more than FIFTY percent (50%) of the equity interest in the entity, or
- (iii) is otherwise able to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise;

Application Software means the computer programs to be developed by the Contractor through the delivery of the Services, which computer programs shall be capable of meeting or exceeding the Company's requirements as stated in the Requirement Specifications;

Audit Representative is as defined in Clause 28.1 below;

Background IP is as defined in Clause 16.5 below;

Code Material is as defined in Clause 12.1.2 below;

Code Updates is as defined in Clause 12.2 below;

Company means National Healthcare Group Pte. Ltd.;

Confidential Information is as defined in Clause 31.1 below;

Contract means this agreement (including all schedules and annexes attached) between the Company and the Contractor, with any authorised variations or amendments (including such

variations or amendments occurring by way of Change Requests agreed to by the Parties) which would govern the supply of the Software and/or Services by the Contractor to the Company;

Contract Price	means the total price payable to the Contractor under this Contract for the supply, delivery, installation, testing and commissioning of the Software and for the performance of the Services under this Contract;
Contractor	means the party who or which has undertaken to supply the Software and/or perform the Services;
Contractor Material	means the Software and related documentation that is proprietary to the Contractor;
Delivery Schedule	means the timelines stipulated by the Company for the delivery, installation, testing and commissioning of the Software and/or parts thereof, and/or for the commencement, performance and completion of the Services and/or parts thereof (as the case may be), and including the timelines in any delivery schedule or Implementation Plan (as defined in Schedule 3 below) agreed between the Parties;
Documentation	means both hard (printed) and soft (in computer readable format and permanently recorded onto storage media) copies of publicly available manuals, reports, applicable operational instructions, screen layouts, report formats, any additional specifications and documentation relating to the Software and/or Services necessary for the use, maintenance and operation of the Software and/or Services and from time to time as such materials are developed or updated;
Effective Date	means <Date> ;
Exit Date	is as defined in Clause 26.1 below;
Force Majeure Event	is as defined in Clause 30.1 below;
Foreground IP	is as defined in Clause 16.1 below;
Intellectual Property (IP)	means patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright (including without limitation, rights in computer software whether in compiled or source form), design rights, trade and business names, domain names and any other similar protected rights or assets in any country;
Intellectual Property Rights (IPR)	means rights arising out of or in connection with Intellectual Property;
ISO Document	means the International Organization for Standardization (“ISO”) standards documentation for project management including ISO 10006 on “Quality Management Guideline to Quality in Project Management”;
Licensee	means the Company or any Affiliate;
Milestones	means the dates or events designated as a milestone by the

	Company as stipulated in the Delivery Schedule;
Non-Contractor Background IP	is as defined in Clause 16.7 below;
Open Source	means any program, code or instruction (" Code ") which the Contractor has been licensed to use, which licence has any one or more of the following characteristics: (i) the Codes are freely re-distributable; (ii) the source code form of the Codes are to be made available to all parties; (iii) the Contractor must allow modifications to be made to and permit derived works to be created from any work containing the Codes; (iv) the Contractor must allow such modifications or derived works to be distributed under the same terms as the licence of the original Code; (v) the source code form of the modifications or derived work are to be made available to all parties; or (vi) the rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional licence by those parties;
Party	means a party to this Contract and Parties mean all the parties to this Contract;
person	means any company, firm or entity governed by the Business Registration Act, Business Trust Act, Companies Act, Limited Partnerships Act, Limited Liability Partnerships Act or Partnership Act, and shall include any individual or individuals owing, managing, controlling or directing the policies, business and operations in the same;
Personal Data	has the same meaning assigned to this phrase as in Section 2(1) of the Personal Data Protection Act 2012 (No. 26 of 2012) of the Statutes of the Republic of Singapore;
process	in relation to Personal Data, means: (i) to carry out any operation or set of operations in relation to the personal data, and includes recording, holding, organisation, adaptation/alteration, retrieval, combination, transmission or erasure/ destruction; and/or (ii) copy, use, access, display, run, store review, manage, modify, transform, translate, extract components into another work, integrate or incorporate as part of a derivative work; and/or (iii) to permit others to do (i) and (ii). "processing" shall have the corresponding meaning as a verb for the same;
Requirement Specifications	means: (i) the specifications and descriptions stipulated in this Contract and the Schedules hereto; and (ii) such other amendments or specification as may be mutually agreed in writing between the Parties; including but not limited to the specifications and

descriptions as set out in [Schedule 6](#);

Security Deposit	means the deposit placed or to be placed by the Contractor pursuant to Clause 24 below;
Service Level Standards	means those standards of performance to be achieved by the Contractor in performing the Services, as set out in Schedule 4 ;
Service Provider	is as defined in Clause 4.5 below;
Services	means any and all services that the Contractor is required to provide to the Company under this Contract, including the services referred to in Schedule 3 and the Annexes thereto, if any, including but not limited to, Maintenance Services, Transition Services and Implementation Services;
Site	means the locations where the Software is to be installed or where the Services are to be performed as stated in the Requirement Specifications;
Software	means all software (including any upgrades thereof) including but not limited to Application Software and utility programs, represented by the Contractor (in its response to the Requirement Specifications) as being capable of meeting or exceeding the Company's requirements as stated in the Requirement Specifications;
Transition Out Period	Is as defined in Clause 25.6 below;
Trigger Events	are as set out in Clause 12.7 below; and
Work	<p>means and include all ideas, concepts, know-how, techniques, inventions, discoveries, improvements, specifications, designs, methods, devices, systems, reports, studies, object or source code, computer software, programming and other documentation, flow charts, diagrams and all other information or tangible material of any nature whatsoever (in any medium and in any stage of development or completion) relating to the subject matter of this Contract or the Software and/or Services, that are conceived, designed, practiced, prepared, produced or developed by the Contractor:</p> <ul style="list-style-type: none"> (i) during the course of the Services; (ii) based upon knowledge or information learned or gained from the Company; or (iii) resulting from the use of the Company's facilities, personnel, or materials.

2.2 References in this Contract to words incorporating the masculine gender only shall where the context so admits include the feminine and/or neutral genders and vice versa and references in this Contract to words incorporating the singular meaning shall include the plural meaning and vice versa and words denoting natural persons shall include bodies corporate, incorporate, associated partnerships, firms, trusts, associations, joint ventures, governments, governmental agencies or departments or any other entity, and all such words shall be construed interchangeably in that manner.

2.3 The paragraph or clause headings and marginal notes in this Contract have been inserted for ease of reference and convenience only and shall not affect the construction or interpretation of this Contract.

- 2.4 References to clauses and schedules shall be references to Clauses of and the Schedules to this Contract. The Schedules are to have effect and be construed as an integral part of, and shall be deemed to be incorporated into this Contract.
- 2.5 References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and all statutory instruments or orders made pursuant to it.
- 2.6 Any reference to “day” shall mean a period of TWENTY-FOUR (24) hours, ending at TWELVE (12) midnight.
- 2.7 If any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day. Where expressed by reference to a person in Singapore, business day means any day other than a Saturday, a Sunday or a day on which licensed banks are authorised or required to be closed in Singapore and, where expressed by reference to the jurisdiction of a person other than Singapore, means any day other than a Saturday, a Sunday or a day on which licensed banks are authorised or required to be closed in the jurisdiction of that person, then that time is deemed to only expire on the next business day.
- 2.8 References in this Contract to anything which any Party is required to do or not to do shall include its acts, defaults and omissions, whether direct or indirect, on its own account, or for or through any other person and those which it permits or suffers to be done or not done by any other person.
- 2.9 For certain Software or Services sought to be procured by Company, additional terms and conditions may apply. These additional terms and conditions shall be contained in the Schedules attached to this Contract and shall be made a part of this Contract. The defined terms used in the Schedules may also be used in other parts of this Contract. In the event of a conflict between any of the terms of this Contract and the Schedules, the conflict will be resolved in the following order of priority: (1) the clauses to this Contract; and (2) the Schedules (including any annex, appendix or exhibit attached thereto). Without prejudice to the generality to the foregoing, the following Schedules are attached to this Contract:

- [Schedule 1](#) – Form of Banker’s Guarantee
- [Schedule 2](#) – Pricing
- [Schedule 3](#) – Additional Terms and Conditions
- [Schedule 4](#) – Service Level Standards
- [Schedule 5](#) – Assumptions
- [Schedule 6](#) – Requirement Specifications

3 SUPPLY OF SOFTWARE AND SERVICES

- 3.1 The Contractor shall supply the Software and perform the Services in accordance / compliance with the requirements and specifications as set out in the Requirement Specifications and/or in this Contract at the price(s) agreed upon and in accordance with the terms herein.
- 3.2 In the event that (i) a new, improved or upgraded version of the Software having substantially the same functions but with improvements or enhancements is introduced or (ii) the Software becomes obsolete or (iii) the Contractor is aware that vendor support for the Software is going to be discontinued, before delivery, the Contractor shall notify the Company and the Company shall have the option to require that the Contractor supply the new, improved or upgraded version of the Software at the same price or lower. Where the Company requires the Software as specified in this Contract to be supplied and the price of the Software has been lowered due to the introduction of the new, improved or upgraded version, the Contractor shall be obliged to supply the Software to the Company at the lower price. In the event of any disagreement, the Company shall at its sole

discretion determine whether a new, improved or upgraded version of the Software has been introduced and such determination shall be final and binding.

Hardware Specifications

- 3.3 The Contractor shall provide the Company with hardware specifications, specifying in sufficient detail, the hardware required for the Software. The Contractor represents and warrants that any hardware which complies with the specifications provided by the Contractor would be correctly and adequately sized (in terms of performance / throughput as well as storage capacity) to satisfy the requirements of the Company and the Affiliates in relation to the Software as stipulated in the Requirement Specifications.

4 SCOPE OF CONTRACT

- 4.1 The Contractor shall:-

- (i) carry out and complete the supply and/or development of the Software in accordance with this Contract and the Requirement Specifications in every respect;
- (ii) install and test the Software in accordance with the Requirement Specifications;
- (iii) provide and/or perform the Services in accordance with this Contract and the Requirement Specifications in every respect.

- 4.2 In the event of any discrepancy, error or omission on the part of the Company in this Contract or the Requirement Specifications, the Company shall resolve the discrepancy, error or omission and such resolution shall be final and binding. The Company may permit an increase in price where such resolution resulted in additional Software and/or Services being furnished by Contractor. Where such resolution resulted in a decrease of Software and/or Services being supplied, Contractor shall reduce its price correspondingly.

- 4.3 In the event of any discrepancy, error or omission on the part of the Contractor in the fulfilment of the Requirement Specifications, the Contractor shall resolve the discrepancy, error or omission to the satisfaction of the Company and there shall be no increase in the price payable to the Contractor where additional Software and/or Services are furnished to the Company. Where such resolution resulted in a decrease of Software and/or Services being supplied, Contractor shall reduce its price correspondingly.

- 4.4 The Contractor acknowledges and agrees that whilst the Company is the contracting party to this Contract, the Software and/or Services may be delivered to or enjoyed by or performed for the benefit of the Company's Affiliates. Whilst the Company's Affiliates may place their request for Services directly with the Contractor and the Contractor shall perform the Services as though such request was made by the Company, no Affiliate shall have the power or authority to modify or change any aspect of this Contract.

- 4.5 The Contractor further acknowledges that the Company has entered into an agreement with and/or may from time to time enter into agreements with a third party service provider(s) pursuant to which the third party service provider's employees, contractors and agents (collectively, "**Service Provider**") will provide certain information technology and related services to the Company. The Contractor consents to and agrees that the Service Provider may operate, manage and access the Software. In the event that the Contractor is not the party which is able to give such consent or agreement, the Contractor represents and warrants to the Company that the Contractor shall obtain such consent and agreement from the appropriate party so as to enable the Service Provider to operate, manage and access the Software. For the avoidance of doubt, in the event that the Company replaces the Service Provider or appoints another vendor in addition to the Service Provider to provide the aforementioned services, the provisions herein shall be read and be deemed to extend or apply to that other third party service provider as though that other third party service provider was referenced in this Clause in lieu of the Service Provider or in addition to the Service Provider.

Open Source Material

- 4.6 If the Contractor intends to supply, use or include any Open Source material in (or as part of) the Software, the Contractor shall notify the Company in advance and obtain the Company's prior written approval before doing so. Any such notice shall:
- 4.6.1 clearly identify the Open Source material and state the reasons for wanting to use or include the Open Source material;
 - 4.6.2 describe the component of the Software which would contain the Open Source material;
 - 4.6.3 include a copy of the licence agreement which governs the use of the Open Source material; and
 - 4.6.4 indicate the source of the Open Source material (including the URL at which location the Open Source material may be found or downloaded from).

The Company may or may not grant approval at the Company's absolute discretion.

- 4.7 In the event that the Contractor receives a request from a third party for the source codes to that part of the Software which utilises or contains Open Source material, the Contractor shall forthwith obtain the particulars of that third party (including without limitation the name and address of that third party and the purpose for the third party's request) and forward such particulars to the Company.
- 4.8 Notwithstanding the Company's written approval for the use or inclusion of any Open Source material, the Contractor shall remain responsible and liable for any part of the Software which contains or utilises the Open Source material.

Import Quota

- 4.9 Where a component of the Software is subject to an import quota, the Contractor shall state whether or not it has obtained the quota and, if so, whether it is adequate to cover the quantity required by the Company under this Contract

Standards and Codes Of Practice

- 4.10 It shall be the responsibility of the Contractor to ensure and furnish evidence that the entire Software and its components thereof to be supplied by the Contractor conform to all relevant, Singapore laws, International Standards and Code of Practice currently in force

5 CONTRACT PRICE

- 5.1 The Contract Price quoted shall represent the total cost to the Company (excluding) Goods and Services Tax ("**GST**") for each and every component of the Software and performance of Services proposed or quoted. This total price shall include:
- 5.1.1 all transport, handling, delivery, insurance, taxes, royalties, duties, etc., where applicable;
 - 5.1.2 all on-site / off-site labour for installation;
 - 5.1.3 making good and/or replacement of any damaged building structures, etc., damaged during the installation and any obvious work to which express reference has not been made;
 - 5.1.4 Documentation as specified in this Contract;
 - 5.1.5 training as specified in Clause 8 below;
 - 5.1.6 testing and commissioning as specified in Clause 9 below;
 - 5.1.7 warranties as specified in Clause 18 below;
 - 5.1.8 provision of all Services under this Contract; and
 - 5.1.9 all licence fees payable for any Software supplied by or through the Contractor.

5.2 A pricing schedule shall be submitted by the Contractor and attached hereto as [Schedule 2](#). The pricing schedule shall not be subject to change during the term of this Contract unless expressly agreed to in writing by the Company.

5.3 The pricing schedule shall be based on the Requirement Specifications and shall state the Contractor's price for the provision of the Software and Services.

6 DELIVERY

6.1 Time of delivery, installation and implementation are of the essence in this Contract. The Contractor shall perform and complete the Services and deliver, install, and commission the Software in accordance with the Delivery Schedule. The Contractor shall deliver the Software to the Site as directed by the Company. The Company shall provide free access to the Site and to any services, hardware or facilities that may be required to deliver and install the Software.

6.2 Where any delivery is made electronically or in electronic format, the Contractor understands and accepts that:

6.2.1 risk of non-delivery, mis-delivery, incomplete or late delivery to the Company is entirely on the Contractor;

6.2.2 where the Company certifies that any deliverable received by the Company is unusable, inaccurate or is otherwise corrupted, then it shall be deemed that no delivery took place and the Contractor shall be obliged to re-deliver the deliverable to the Company within the time frame specified by the Company; and

6.2.3 the Contractor shall be under a duty to transmit the deliverables to the Company only in encrypted form and that the Contractor shall provide to the Company all means necessary to decrypt the so transmitted deliverables.

6.3 The Company reserves the right, at its discretion, to vary the delivery dates and/or commissioning of the Software and/or performance and completion of the Services at no cost to the Company if notification is given TWO (2) months in advance by the Company to the Contractor, provided that the Company may only bring forward delivery dates, installation, and commissioning of the Software and/or performance of the Services only with the agreement of the Contractor.

6.4 Should any component of the Software be found incomplete, defective or not in accordance with this Contract during testing as set out at Clause 9 below or upon delivery, the Contractor must make good the delivery of the short supplied components and/or replace all defective or non-conforming components within SEVEN (7) days upon notification by the Company.

6.5 If the Contractor does not comply with Clause 6.4 above, the Contractor shall be required, when requested by the Company, to remove or uninstall the component of the Software and to re-deliver the component at the Contractor's own expense complete with the previously short-supplied components and/or with all damage, defects or inferiority remedied, within the time as determined by the Company, failing which the Company shall have the right to purchase replacements elsewhere or make good any damage in any manner it deems fit and all costs incurred thereby shall be deducted from any monies due or which may become due to the Contractor under this Contract or shall be recoverable as a debt. A certificate by an officer of the Company as to the amount of damages caused and consequential losses suffered by the Company shall, save for manifest error, be final and conclusive. The Contractor shall be responsible for and shall make good any damage to any part of the Site, inclusive of fixtures, fittings and furniture, caused by its servants, workmen or agents when removing or replacing the component of the Software.

6.6 In the event the Contractor fails to meet any of the Milestones, the Company shall, in addition to any other remedies which it may have under this Contract or otherwise, have the right, but not obligation, in relation to each delay:-

- 6.6.1 to cancel all or any such component of the Software or any such part of the Services without being liable therefore in damages and obtain the same from other source(s) and all increased costs incurred thereby shall be deducted from any monies due to or become due to the Contractor under this Contract or shall be recoverable as damages; or
- 6.6.2 to require the Contractor to pay or to deduct from the Contract Price, as and for liquidated damages (and not as a penalty) a sum to be calculated at the rate of ONE-HALF percent ($\frac{1}{2}\%$) of the Contract Price for each day of delay, subject to a minimum of S\$500 and a maximum of TEN percent (10%) of the Contract Price ("**Maximum LD for Delay**"). For avoidance of doubt, the Maximum LD for Delay applies to each event of delay committed by the Contractor. The Contractor acknowledges that there is no limit on the total liquidated damages payable pursuant to this Clause 6.6, for repeated delays committed by the Contractor.

For the avoidance of doubt, the Contractor fails to meet a Milestone, if by that date, the Contractor has not delivered or there is incomplete delivery of such components of the Software or Service as required under this Contract, or where such components or Service are delivered but do not meet the requirements for such components or Service as set out in this Contract and/or the Requirement Specifications.

- 6.7 All liquidated damages shall be paid to the Company by way of cash, cheque or banker's order not later than FIFTEEN (15) calendar days from the date of the Company's written notification to the Contractor informing the Contractor that liquidated damages are payable. If the Contractor fails to pay the said liquidated damages, the Company is entitled to recover the liquidated damages as a debt due from the Contractor in any court of competent jurisdiction. The Company reserves the right to charge interest for any delayed payment at the rate of SIX percent (6%) per annum.
- 6.8 Notwithstanding Clause 6.6 above, in the event the Contractor fails to comply with its obligations under Clause 6.1 above and the failure is not remedied within SEVEN (7) days after being called to its attention by written notice from the Company, even after the Maximum LD for Delay has been paid or is payable by the Contractor to the Company, the Company shall have the right to terminate this Contract forthwith with Clause 25.4 below to apply.
- 6.9 The Contractor shall obtain a receipt from the Company for the delivery of components of the Software PROVIDED that the issue of such receipt shall not be any representation on the part of the Company of complete delivery or of delivery in accordance with this Contract or delivery in good order and condition and shall not relieve the Contractor from its responsibility to make good the delivery of short supplied components, to replace defective, discrepant or damaged components of the Software.

7 DOCUMENTATION

- 7.1 Documentation, in the English Language, shall be supplied by the Contractor at no additional charge together with each component of the Software to be supplied to the Company. In particular, the Contractor shall provide the following, in both hard and soft copy, in relation to the Software:
 - 7.1.1 TWO (2) sets of the instructions and technical documentation which explain the functions, operation and applications of the Software in detail; and
 - 7.1.2 all other documentation that the Contractor is obliged to provide under the Requirement Specifications.
- 7.2 Failure to supply the above documentation shall be construed as incomplete delivery.

- 7.3 The Contractor shall supply at no additional charge updated technical documentation and information pertaining to the Software for as long as such updates or information are issued.

8 TRAINING

- 8.1 The Contractor shall] provide training to the Company's nominated personnel. The details of the training shall be specified in the Requirement Specifications or as may be agreed in writing by the Parties.

- 8.2 All training shall be conducted in the English Language by the Contractor's qualified instructor(s). The training to be provided shall be to such a level that the Company's nominated personnel shall be able to:

8.2.1 use, apply or handle; and/or

8.2.2 install, calibrate or maintain,

all versions of Software purchased from the Contractor.

- 8.3 Upon the Company's request, the Contractor shall provide service/operator's training at no cost to the Company's nominated representative(s), regardless whether the Software is on a service/maintenance contract.

9 TESTING

- 9.1 It shall be the Contractor's responsibility to test the Software and satisfy itself that the Software meets the Requirement Specifications before delivery of the Software to the Company. Where appropriate, pre-delivery test results shall be documented and submitted to the Company together with the delivery of the Software, failing which it shall be construed as incomplete delivery and appropriate action shall be taken in accordance with Clause 6 above.

- 9.2 The Contractor shall be responsible for the testing of the Software. For this purpose, the Contractor shall be represented by competent staff, suitably equipped with all necessary tools, equipment and instruments, who shall test the Software in the presence of and to the satisfaction of the Company's authorised representatives. The Contractor shall perform any additional test(s) requested for by the Company during testing of the Software where the Contractor's recommended test(s) are, in the opinion of the Company, inadequate. The Contractor shall bear all costs associated with this Clause 9.

10 WHERE QUANTITIES ARE ESTIMATED OR NOT SPECIFIED

- 10.1 If the total quantities of any component of the Software or Services or the frequency and extent of any Services to be supplied by the Contractor during the period of this Contract are not specified in this Contract or stated to be merely estimated, the Company shall be under no obligation to complete the transaction by paying for such component or Services, whether the purpose is for licensing of any component of the Software or otherwise. Any statement of the estimated quantities of the component or the estimated frequency and extent of the Services required during the period of this Contract which may have been given to the Contractor in the course of inviting proposals shall be deemed to be approximate only and merely for the information of the Contractor.

11 INDEMNITY AND LIMITATION OF LIABILITY

- 11.1 The Contractor shall fully indemnify, defend and hold harmless the Company, its Affiliates and their respective directors, officers, departments, employees, servants and agents against all or any liability, claim, expenses (including court costs and fees of solicitors (on a full indemnity basis) and other professionals) or loss in respect of:-

- 11.1.1 damage to any property, loss of data, unavailability of data, corruption of data or personal injury to or death of any person due to the negligence or wilful default of the Contractor, its servants or agents arising out of or in the course of the performance of this Contract.
 - 11.1.2 any claims by any workmen, employee or agent or subcontractor or any workmen, employee or agent of such subcontractor of the Contractor for any personal injury and/or death suffered in connection with the performance of this Contract including but not limited to payment under the Work Injury Compensation Act (Cap. 354) and for any costs, charges or expenses incurred in respect thereof.
 - 11.1.3 any claims by any person(s) whatsoever (including but not limited to any patient or visitor) arising out of or connected to or contributed to by the breach or non-performance of this Contract by the Contractor or by the malfunction of the Software and/or Services supplied by the Contractor.
- 11.2 In relation to any claims pursuant to Clause 11.1 above, the Parties agree that:-
- 11.2.1 the Company shall promptly notify the Contractor in writing of any such claims;
 - 11.2.2 the Contractor may not enter into any settlement, agreement, arrangement or compromise that would have a material or adverse effect on the Company without the Company's prior consent;
 - 11.2.3 the Company shall co-operate with the Contractor, at the Contractor's expense, in defending or settling such claims; and
 - 11.2.4 the Company may join in defence with counsel of its own choice at its own cost or expense.
- 11.3 Unless indicated otherwise in this Contract, in no event will either Party be liable to the other for indirect or consequential damages arising out of or in connection with this Contract.
- 11.4 The limitations and exclusions in Clause 11.3 above and Clause 11.5 below shall not apply to losses or damages attributable to and nothing in this Contract excludes or limits the liability in any way whatsoever of either Party in respect of:
- 11.4.1 death, personal injury or damage to property whether or not caused by its negligence;
 - 11.4.2 any indemnity given in this Contract;
 - 11.4.3 fraud, dishonesty, or the tort of deceit, or wilful neglect by its employees, agents or sub-contractors;
 - 11.4.4 breach of any of the provisions on confidentiality or data (including Personal Data) protection;
 - 11.4.5 fraudulent and/or negligent misrepresentation; and
 - 11.4.6 liability which may not otherwise be limited or excluded under applicable law.
- 11.5 Subject to Clause 11.4 above, the aggregate liability of a Party arising out of or in connection with this Contract whether arising from contract, tort, negligence or otherwise shall be limited to that of THREE (3) times the Contract Price.
- 11.6 The Company may recover directly from the Contractor any damages suffered by the Affiliates as a result of any failure of the Contractor to comply with the terms of this Contract. All such damage suffered by the Affiliates shall for the purposes of this Contract be deemed to be damages suffered by the Company.

12 SOFTWARE ESCROW

- 12.1 If required by the Company, the Contractor shall:
- 12.1.1 within THIRTY (30) days from the Effective Date enter into a source code escrow agreement with the Company and an escrow agent which agreement shall reflect the provisions of this Contract and in particular this Clause 12;

- 12.1.2 in accordance with the timelines to be stipulated by the Company, deposit with the escrow agent, a copy of any source and object code of the Software including compilers, middleware, resource libraries and any ancillary computer program necessary for the use and operation of the Software and Background IP utilized by the Contractor to provide the Software and the Services together with any and all related Documentation ("**Code Material**") which Documentation shall be sufficiently clear so as to enable (i) a reasonably skilled programmer to understand and use the source codes; (ii) a reasonably skilled systems administrator to understand and use the object codes; (iii) a reasonably skilled systems analyst or programmer to understand and use the Documentation to build, maintain and/or operate the Software or any part thereof and any interfaces associated therewith;
 - 12.1.3 prepare the Code Material to be compliant with the requirements of Clause 12.1.2 above and bring the Code Material for verification at the Company's premises and upon verification by the Company, the Contractor, accompanied by a representative of the Company, shall make the deposit of the verified Code Material with the escrow agent.
- 12.2 The Contractor shall maintain and update the Code Material deposited with the escrow agent for all maintenance releases, patches, bug fixes, enhancements, updates, modifications and new versions of any Background IP and any interface during the term of this Contract ("**Code Updates**") as and when the Code Updates are made available.
- 12.3 All costs associated with the deposit of the Code Material, the maintenance and update of the Code Material and any other fee or charge imposed by the escrow agent, whether pursuant to the escrow agreement or otherwise, will be borne by the Contractor.
- 12.4 Upon the occurrence of any of the Trigger Events (as set out at Clause 12.7 below), the Company may:
- 12.4.1 serve on the escrow agent a written notice stipulating which of the Trigger Events has occurred;
 - 12.4.2 demand in the written notice the release of ONE (1) complete set of the relevant Code Material to the Company; and
 - 12.4.3 certify to the escrow agent that a copy of the written notice has been served on the Contractor.
- 12.5 If the escrow agent does not receive a written counter notice from the Contractor within TEN (10) business days from the date of the Company's notice, specifying that no such occurrence as stated in the Company's written request has taken place, the escrow agent shall release Code Material to the Company. Where the escrow agent has received such counter notice, the escrow agent shall forthwith forward a copy of the counter notice to the Company.
- 12.6 Upon release of the Code Material to the Company, the Company and the Affiliates shall have the right and licence at no additional cost to the Company and/or the Affiliates to use the Code Material to maintain the Software and Documentation provided that:
- 12.6.1 the Company may allow a third party to use the Background IP, Software and/or the Code Material for the implementation, integration and operation of the Software, maintenance of the Background IP and Software or perform any such act that the Company and or the Affiliates may perform in relation to the Background IP, the Software or the Code Material;
 - 12.6.2 the Contractor reserves all rights and title to possess or use the Background IP, Software and the use of the Code Material by the Company, the Affiliates or its nominee shall not be deemed or interpreted or construed to grant any right to create any enhancements, new versions or derivative works of the Background IP;
 - 12.6.3 the Code Material shall not be used for any other purpose except those as expressly stated in this Contract.

12.7 The Trigger Events are:

- 12.7.1 where the Contractor passes a resolution, or any court of competent jurisdiction shall make an order that the Contractor shall be wound up (otherwise than for the purposes of amalgamation or bona fide reconstruction), or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle any court of competent jurisdiction or a creditor to appoint a judicial manager, receiver or manager or which entitle any court of competent jurisdiction to make a winding-up or judicial management order;
- 12.7.2 where the Contractor discontinues or provides the Company written notice of its intent to discontinue, its operations in Singapore;
- 12.7.3 where the Contractor assigns and/or transfers its Intellectual Property rights in the Code Material to a third party;
- 12.7.4 where the Contractor abandons its obligations in relation to the Software as set out in this Contract which abandonment shall be deemed to include but is not limited to, being in breach of its obligations to provide maintenance to or modification of the Software, or the failure to remedy any default or defect in the Software, in accordance with this Contract in spite of being notified by the Company; or
- 12.7.5 such other events as may be agreed by the Parties.

12.8 In the event that the Contractor does not have the right or the ability to comply with the provisions of Clauses 12.1 and/or 12.2 above only because the Contractor does not own the Intellectual Property Rights to/comprised in the Software (or that part of the Software), then the Contractor shall procure that owner of the Intellectual Property Rights to/comprised in the Software enters into a source code escrow agreement with the Company in accordance with and reflecting the provisions of this Clause 12. In such event, a reference to "Contractor" in this Clause 12 shall be read as and be construed to be a reference to the owner of the Intellectual Property Rights to/comprised in the Software.

13 INSURANCE

13.1 The Contractor shall take out at its own expense with an insurance company to be approved by the Company, a policy or policies of insurance in terms to be approved by the Company, indemnifying the Contractor and the Company from all liabilities

13.1.1 arising out of claims by any and every workman or employee whether such liability arises from the Work Injury Compensation Act (Cap. 354) or otherwise and from all costs and expenses incidental or consequential thereto; and

13.1.2 in respect of personal injury or death or loss or damage to property and against loss or damage suffered or incurred by the Company by fire and such other perils (including product liability) as the Company may require.

13.2 A copy of any policy or policies taken out by the Contractor in compliance with this Clause shall be deposited with the Company if required by the Company and the Contractor shall maintain such policy or policies in full force and effect by the payment of all premiums from time to time on the first day on which the same ought to be paid until completion of this Contract and shall, if the Company so directs, deposit with the Company copies of the receipts in respect of the payment of such premiums.

13.3 If any default is made by the Contractor in complying with the terms of this Clause 13, the Company may, without prejudice to any other remedy available to the Company for breach of any terms of the Contract:

13.3.1 withhold all payments which would otherwise be due to the Contractor under this Contract and out of such money so withheld satisfy any claim by workmen or employees that would have been borne by an insurance company had the Contractor not made default in maintaining a policy of insurance, and/or

13.3.2 pay such premiums as may have become due and remain unpaid and deduct the amount of such premiums from any money due or becoming due to the Contractor.

13.4 Nothing in this Clause shall be construed to take away or to waive or in any manner to modify the right of the Company to be indemnified by the Contractor in respect of all claims, costs and other expenses whatsoever which, by reason of the Contractor's default or otherwise, may become payable by the Company.

14 SECURITY PASS AND WORK PERMIT

14.1 All personnel deployed by the Contractor to carry out works at the Site including contract workers, supervisors etc. must obtain and display the relevant security pass while at the Site. In the event foreign workers are deployed, it shall be the Contractor's sole responsibility to ensure that such foreign workers have valid permits or passes issued by the Government of Singapore and the Contractor is to provide the Company with a comprehensive list of these workers and copies of their recent photographs and permits / passes. This list shall be forthwith updated in the event of changes in the deployment of foreign workers.

14.2 The Contractor shall indemnify the Company, its servants, agents, employees, officers and departments against any monetary penalty, claim, costs, charges and expenses incurred or imposed by any Court arising out of any breach of Clause 14.1 above or any contravention of any applicable law, regulation or guidelines.

15 ADEQUACY OF DESIGN

15.1 Notwithstanding any approval (whether verbally or in writing) given by the Company to any of the Contractor's proposals, designs and technical specifications relating to the performance of the Software and/or Services, the Contractor agrees and declares that it shall remain solely responsible for the adequacy of the design, performance function and reliability of the Software and/or Services and for compliance with the Requirement Specifications.

15.2 The Contractor shall utilise optimum and cost effective methods in the design and supply of the Software.

15.3 In the event of any inadequacy in the design of the Software, the Contractor shall, whenever it occurs, rectify immediately such inadequacy at the Contractor's own expense.

15.4 In the event the Contractor's design of the Software is inadequate and cannot be rectified in the opinion of the Company, the Company shall, in addition to any other remedies which it may have under this Contract or otherwise, have the right to cancel all or any such components of the Software or Services without being liable therefore in damages and obtain the same from other source(s) and all increased costs incurred thereby and/or any other consequential losses suffered by the Company shall be deducted from any monies due to or become due to the Contractor under this Contract or shall be recoverable as a debt. A certificate by an officer of the Company as to amounts of damages caused and consequential losses suffered by the Company shall, save for manifest error, be final and conclusive.

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Where as a result of carrying out its obligations under this Contract in respect of work designed by the Contractor for which the Contractor is to be paid by the Company, the Contractor generates data, know-how, proprietary technical data or any Intellectual Property ("**Foreground IP**"), then such Foreground IP shall vest in and be owned by the Company as and when it is generated. The Contractor hereby assigns to the Company by way of assignment of future copyright all legal and beneficial right, title and interest in Works created by the Contractor pursuant to this Contract. All Foreground IP capable of

vesting in accordance with this Clause 16.1 without the need for any transfer or assignment to be executed by the person generating the same shall vest in the Company by virtue of this Clause 16.1 alone without the need for any transfer or assignment. All Foreground IP incapable of vesting in accordance with Clause 16.1 without the need for a transfer or assignment to be executed by the person generating the same, shall be arranged by the Contractor to be vested in the Company, with the necessary executed transfer or assignment at no additional charges or cost to the Company.

- 16.2 The Contractor shall deliver the source codes to all Foreground IP to the Company upon request of the Company made at any time and from time to time, on the termination of this Contract and/or within ONE (1) month of the Commissioning Date. The said source codes shall be delivered in the following manner:
- 16.2.1 ONE (1) soft copy of the source codes in CD; and
 - 16.2.2 ONE (1) hard copy of the source codes to be signed-off by both Parties unless otherwise agreed.
- 16.3 The Contractor shall not disclose, release or sell to any persons or otherwise deal with the Foreground IP in any manner whatsoever, without the authorisation of the Company.
- 16.4 Each Party shall do everything necessary (including executing agreements and documents) to give full effect to the provisions of this Clause 16.
- 16.5 For the avoidance of doubt, nothing in this Contract shall affect the either Party's right to own any IPR created prior to or independently of this Contract ("**Background IP**").
- 16.6 In relation to Background IP owned by the Contractor (including any Contractor Material) which is provided by the Contractor under this Contract:-
- 16.6.1 the Contractor grants to the Licensees and its agents, a non-exclusive, transferable, sub-licensable, perpetual, irrevocable, fully paid-up right and licence with no geographical restrictions to (whether by itself or on its behalf) use, execute, display, perform, possess, modify and create derivative works from the Background IP solely and exclusively for the purposes intended under this Contract. For the avoidance of doubt, the Contractor agrees that the licence hereby granted shall continue and remain in force notwithstanding the absence or any cessation of maintenance and support services for such Background IP;
 - 16.6.2 the Licensees may use the Background IP on unlimited information systems, including on computer servers and communication networks hosted on, operated by or controlled by Licensees' other service providers, provided always that such use shall only be the purposes intended under this Contract;
 - 16.6.3 the Contractor shall not be permitted to audit the use and operation such Background IP insofar as the use and operation of the Background IP is confined to the purposes intended under this Contract; and
 - 16.6.4 the Licensee may make a reasonable number of copies of the Background IP for development, testing, staging, roll-out, operational security, back-up and disaster recovery purposes.
- 16.7 In relation to Background IP (including Software and related documentation) which is not owned by the Contractor ("**Non-Contractor Background IP**") but which is recommended or supplied by the Contractor under this Contract, the Contractor shall grant to or procure for the Licensees, a licence for such Non-Contractor Background IP on terms substantially similar to Clause 16.6 above. If the Company wishes to negotiate the terms of the licence with the proprietor of the Non-Contractor Background IP, the Contractor shall actively assist the Company in and facilitate such negotiations. In the event that the Company and the said proprietor is unable to come to an agreement on the terms of the licence, the Contractor shall propose to provide the Company with such other Non-Contractor Background IP with the same or similar functionalities / capabilities and at no additional costs to the Company.

16.8 In performing its obligations under this Contract, the Contractor agrees that it shall comply with, assist or otherwise enable the Licensees to comply with and shall not cause (whether directly or indirectly) the Licensees to be in breach of any licence terms agreed between the Licensees and the proprietor of any Non-Contractor Background IP. The Contractor agrees to indemnify the Licensees for any loss, expense or damage suffered or incurred by the Licensees in connection with a breach of this Clause 16.8.

17 REMEDIES FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES

17.1 All royalties and fees whatsoever claimable by or payable to any person, firm, corporation or government for or in connection with any invention or patent or patent rights, copyrights and trademarks used or required to be used in respect of the Software or any part or unit thereof supplied under this Contract shall deemed to be included in the Contract Price.

17.2 The Contractor shall fully indemnify, defend and hold harmless the Company, its Affiliates and their respective directors, officers, departments, employees, servants and agents against all claims and costs, charges and expenses in respect thereof, by any third party for any actual or alleged infringement of any Intellectual Property Rights which arises or would arise as a result of the Company's acceptance, possession, purchase, use or distribution of the Software or any part or unit thereof or the Company's acceptance or use of the Services performed by the Contractor or any Works delivered by the Contractor to the Company.

17.3 In the event that any such infringement or threatened infringement occurs or may occur, the Contractor shall at its own expense:

17.3.1 procure for the Company and/or its Affiliates the right to continue accepting, possessing, purchasing, distributing or using the Software, Services or Works;

17.3.2 modify or amend the Software, Services or Works or infringing part thereof so that the same becomes non-infringing without affecting the capacity and performance of the Software, Services or Works;

17.3.3 replace the Software, Services or Works or any infringing part thereof with other non-infringing Software, Services or Works of identical capability and performance;

17.3.4 do all things necessary or expedient to permit the Contractor to continue performing the Services; or

17.3.5 if none of the options listed above can be accomplished within a reasonable time or are otherwise not commercially reasonable, refund to the Company the price for the Software; or terminate the performance of the affected Service and assist the Company to obtain such replacement service and works at the Contractor's sole cost and expense, without prejudice to any other rights of the Company.

17.4 The Contractor agrees to give the Company prompt written notice of any threat, warning, or notice of any claim or action (including claims or actions in relation to infringement of Intellectual Property Rights) against the Contractor or any other user or any supplier of components utilised in the Software supplied by the Contractor to the Company, which could have an adverse impact on the Company's use of the Software or portion thereof.

17.5 In addition to any other right that the Company might have, in the event that any claim is made or is threatened to be made against the Company that the Software or any part thereof and/or the Company's storage, use and/or distribution of the Software infringe the Intellectual Property Rights or other rights of any third party, or where the Company is informed that the Software may infringe the Intellectual Property Rights or other rights of any third party, the Company shall have the right to suspend this Contract and not take delivery of the Software or any part thereof until the Contractor procures the right for the Company to store, use and distribute such Software or the Contractor replaces or modifies the Software or that part thereof so that they become non-infringing to the satisfaction of the Company and the relevant third party, within such timeline specified by the Company. If the foregoing is not possible or if the Software has already been

delivered to the Company, the Company shall have the right to terminate this Contract with immediate effect with Clause 25.4 below to apply.

17.6 The references to the "Company" in this Clause 17 include a reference to the Licensee.

18 WARRANTIES

18.1 The Contractor represents and warrants to the Company (which representations and warranties shall continue to be valid and enforceable notwithstanding any termination or expiration of this Contract) that:

Services / General

- 18.1.1 the Contractor's employees, agents or subcontractors assigned to perform the Services have the necessary skill, expertise and experience;
- 18.1.2 all technical support, training and the Services will be performed in a timely and professional manner and in accordance with the Delivery Schedule;
- 18.1.3 the Services will conform to the quality standards generally observed in the industry for similar services (including any standard prescribed in the relevant sections of the Requirement Specifications and the relevant sections of the ISO Document) and will be provided with all reasonable skill and care;
- 18.1.4 while the Contractor's employees, sub-contractors or agents are on the premises of the Company or the Affiliates, they will conform to such health regulations, confidentiality regulations, security regulations and other policies and procedures generally applicable to the Company's or Affiliates' own employees;
- 18.1.5 the Contractor's employees, agents or subcontractors assigned to perform the Services will exercise at least reasonable care in the use, safety and storage of the Software and the Company's property and shall leave the Sites in a clean, tidy and safe condition and will not unnecessarily interfere with the Company's and/or the Affiliates facilities or the Company's regular activities;
- 18.1.6 on completion of the Services, the Software shall provide the facilities and functions set out in this Contract;
- 18.1.7 on completion of the installation, that the installation is free from any defects and the Software and deliverables are completely safe for operation
- 18.1.8 that the Contractor shall observe and comply with, and shall procure that its employees, agents and subcontractors observe and comply with, all statutory and other relevant rules and regulations relating to health, safety and security, applicable at the premises of the Company and Affiliates;
- 18.1.9 at the date of commencement of this Contract the Contractor has obtained and will maintain for the duration of this Contract all permits, licences and consents necessary for the Contractor to perform the Services;
- 18.1.10 that any equipment or material provided by the Contractor including debugging software, firmware or hardware, shall not interfere with the normal operation of the Software;
- 18.1.11 that in the event it fails to conform to the terms of this Contract and in particular the warranties given in this Contract, the Contractor shall, without request, take immediate action to remedy the same without any cost to the Company;

Software

- 18.1.12 the Company shall acquire good and clear title to the Works, free and clear of all liens, claims, encumbrances and other restrictions whatsoever;
- 18.1.13 all Software, Works and material used in the provision of the Services and any other materials or Services provided hereunder do not infringe upon any Intellectual Property Right or other proprietary right (including, but not limited to, misappropriation of trade secrets) of any third party;
- 18.1.14 the Documentation provided by the Contractor hereunder will faithfully and accurately reflect the functionality of the Software and will allow the Company or a reasonably skilled programmer to understand how the Software function and/or to maintain the Software;

- 18.1.15 the Company shall quietly and peacefully possess all Software and other materials provided hereunder;
 - 18.1.16 components of the Software provided pursuant to this Contract will be in good working order when installed, ready for use;
 - 18.1.17 components of the Software provided pursuant to this Contract shall be fit for the ordinary purposes for which such components are used and shall perform in accordance with the Documentation;
 - 18.1.18 the use or operation of any part of the Software shall not at any time be restricted or interfered with in any manner whatsoever by any means or devices which would require the services of the Contractor or a third party to restore the Software to full use and operation;
 - 18.1.19 any modification, enhancement or adaptation of the Software supplied by the Contractor shall not require as a condition precedent, the acceptance by the Company of licence terms that derogate from the provisions of this Contract;
 - 18.1.20 all Software delivered by the Contractor does not contain any unauthorised code, virus, Trojan horse, worm or other software code, routine or software components designed to permit unauthorised access, disable, erase, or otherwise harm, impede Licensee's use of the Software;
 - 18.1.21 all installation, technical support, maintenance, training and other Services provided by the Contractor hereunder will be performed in a professional manner by qualified personnel trained and skilled in the performance of the specific Services involved;
 - 18.1.22 the Software shall, have a life span of at least 11 years from the Commissioning Date even if the individual products or components comprised in the Software shall have a life span that is less than the aforementioned period, and that for the life span of the Software, the Contractor will make available support services for the Software even if support for the individual components or products comprised in the Software is no longer available;
 - 18.1.23 all components of the Software provided hereunder shall conform or otherwise satisfy all applicable requirements in the Requirement Specifications;
 - 18.1.24 if stipulated in the Requirement Specifications, the Software shall be capable of servicing, responding to, requesting / querying another system or organization and retrieving the results from that other system or organization or publishing results information / data from the Software to that other system or organization, in an online transaction processing framework as more particularly described in the Requirement Specifications, the Contractor further warrants that the foregoing capability shall be made live and/or operational in a production environment;
 - 18.1.25 the Software will not suffer from any date recognition problems and will be able to process, store and manipulate all date related functions accurately throughout the entire life of the Software; and
 - 18.1.26 the performance and reliability of the Software when working together with any software and/or third party products that the Company may use shall conform with the Requirement Specifications.
- 18.2 The Contractor acknowledges that the Company is reliant on the Contractor's skill, expertise and professional judgment in the specification, sizing, selection, procurement, installation, configuration and customisation of every component of the Software and of the Software as a whole.
- 18.3 Each claim of the Company under any warranty given by the Contractor shall be sent in writing to the Contractor and where applicable, specifying the component of the Software concerned and nature of the defect. All costs incurred as a result of the breach of any warranty under this Clause shall be borne by the Contractor.
- 18.4 The Parties each represents and warrants that the following facts and circumstances are and at all times shall be, true and correct:-
- 18.4.1 it has the requisite corporate power and authority to enter into this Contract and that this Contract does not conflict with any other agreement or obligation by which the respective Party is bound;

- 18.4.2 that there is no material suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or to its best knowledge or belief, threatened against it or affecting its ability to perform its obligations under this Contract; and
- 18.4.3 that the signatories for and on behalf of that Party are authorised and fully empowered to execute this Contract on that Party's behalf.

19 WARRANTY PERIOD

- 19.1 The Contractor shall provide a warranty period of [] months commencing from the Commissioning Date. During the warranty period, the Contractor shall provide the Maintenance Services (as described in [Schedule 3](#)) at the Contractor's own cost.
- 19.2 The Contractor shall submit detailed service reports on all repairs and modifications done to the Software during the warranty period and all components of the Software repaired or modified in any fashion during the warranty period.
- 19.3 The warranty period shall be extended accordingly by the period during which any component of the Software is out of service, such extended period to be computed from the date the Company notifies the Contractor that the component is out of service, to the date such component is replaced or repaired.
- 19.4 Upon expiry of the warranty period (including the extension of such period as the case may be), the Contractor if required by the Company, shall provide the Company with Maintenance Services in accordance with the terms of this Contract and in particular, those contained in [Schedule 3](#).
- 19.5 Notwithstanding Clause 19.1 above, where work under the Contract is carried out in several phases with separate Commissioning Dates for each phase, the Contractor shall provide a separate warranty period for each phase, commencing from the Commissioning Date of each respective phase and which period(s) shall continue until [] months after the Commissioning Date of the last and final phase.

20 AVAILABILITY FOR USE

- 20.1 The Contractor guarantees that the Software shall be available for use during the warranty period in accordance with the Service Level Standards as set out in [Schedule 4](#).

21 QUALITY

- 21.1 The Software supplied shall conform in all respects to the Requirement Specifications and all other specifications, plans and drawings, as appropriate, forming part of this Contract. The Software supplied shall be in good condition and fit for their purpose. The Contractor hereby acknowledges that he/she knows the purpose the Software is intended for.

22 TITLE AND RISK

- 22.1 Except in relation to any Software which is only licensed to the Company, title in the Software shall pass to the Company as soon as they are allocated by the Contractor to this Contract, and in all Documentation of any kind including drawings, designs, test certificates of quality, parts lists and manuals as soon as they are prepared or obtained by the Contractor.
- 22.2 Notwithstanding the earlier passing of title, risk shall not pass to the Company until the Software and/or Documentation are delivered and accepted by the Company in accordance with this Contract and the Contractor shall be responsible for any loss or damage to the Software and/or Documentation howsoever arising prior to risk passing.

23 PAYMENT

- 23.1 Subject to the provisions of this Contract, the Company shall pay the Contractor the Contract Price in accordance with the provisions of [Schedule 2](#). The Contract Price for the Software and/or Services shall not be subject to change during the term of this Contract unless expressly provided for in this Contract. Invoices shall be submitted by the Contractor at the agreed milestone and shall be due and payable by the Company within SIXTY (60) days from receipt of the invoice by the Company. PROVIDED ALWAYS that such payment shall not affect the Company's right to reject any component of the Software or the Contractor's responsibility to replace defective or damaged components, and such payment shall also not amount to a waiver of any accrued rights and remedies of the Company against the Contractor.
- 23.2 Without limiting any of the Company's right under this Contract, the amount of any payment or debt owed by the Contractor to the Company under this Contract may be deducted by the Company from any monies payable by the Company to the Contractor pursuant to this Contract.
- 23.3 The Contractor agrees that if any invoice is not submitted to the Company within SIX (6) months upon delivery, acceptance and/or successful commissioning of the Software or performance of the Services, the Company shall be released and discharged from any liability to make any payment of the debt in relation to such invoice.
- 23.4 The Contractor shall submit such invoices or other documents as the Company may require for the purpose of making payment.
- 23.5 The Company shall not pay for expenses or cost of whatever nature other than those expressly set forth in this Contract.
- 23.6 The Company may, upon notice to the Contractor, withhold payment for components of the Software and/or Services that fail to meet any requirements set forth in the Requirement Specifications or this Contract and/or question any items invoiced to the Company. Such non-payment shall not constitute a default or breach of this Contract. In the event of any dispute between the Company and the Contractor with respect to the invoiced component and/or Services and/or other related matters, the Company shall pay the undisputed amount and the Company and the Contractor shall promptly seek to resolve the disputed matters in accordance with Clause 35 below.

24 SECURITY DEPOSIT

- 24.1 The Company shall have the option to require the Contractor, upon signing of this Contract and for the due and faithful performance of this Contract and the fulfilment of the Contractor's obligations hereunder, to lodge with the Company and maintain for the duration of this Contract, a Security Deposit which may be in the form of cash or an on demand Banker's Guarantee (the form of which is attached hereto as [Schedule 1](#)), equivalent to TEN percent (10%) of the Contract Price.
- 24.2 In the event of any default or breach of any of the obligations by the Contractor, the Company may draw on any Security Deposit placed by the Contractor with the Company to satisfy any liquidated or other damages as may become due to the Company, if the Company has, prior to drawing on any Security Deposit, notified the Contractor in writing of the default or breach and given the Contractor a minimum of SEVEN (7) days to rectify or remedy the default or breach or (if the default or breach cannot be fully rectified or remedied) to pay damages to the amount specified in the notice and the Contractor has failed to comply fully with the notice. Notwithstanding the foregoing, the Company may also utilize and make payment out of deductions from the Security Deposit in such other manner and for such other purposes, expressly allowed by this Contract.
- 24.3 In the event that the Security Deposit provided for in Clause 24.1 above is inadequate to fully indemnify or compensate the Company for any loss, liability, cost, expenses or

damage incurred or suffered by the Company as aforesaid, the Contractor shall, forthwith on demand by or on behalf of the Company, pay to the Company all losses, liabilities, costs, expenses (including without limitation, legal fees on a solicitor and own client basis) and/or damages as may be incurred or suffered by the Company to the extent to which the Security Deposit proves inadequate.

- 24.4 If, at any time, by virtue of the deduction by the Company in accordance with Clause 24.2 above or if by virtue of the Contract Price being revised upwards, the Security Deposit falls below the amount stipulated in Clause 24.1 above, the Contractor shall, forthwith on demand by or on behalf of the Company, top up the Security Deposit by paying the amount of the shortfall or furnishing an on demand Banker's Guarantee on terms acceptable to the Company for the same.
- 24.5 Where the Contractor provides Security Deposit in the form of a Banker's Guarantee, the Contractor shall maintain the validity of the Banker's Guarantee at all times for the duration of this Contract. If a Banker's Guarantee furnished under this Clause 24 shall for any reason expire or be cancelled prior to the date of expiry or termination of this Contract, the Contractor shall, within ONE (1) month of the expiry date or cancellation thereof, procure at its own expense and furnish to the Company a fresh on demand Banker's Guarantee on terms identical or substantially similar to that of the earlier Banker's Guarantee. The fresh Banker's Guarantee shall be binding and effective from the date of expiry of earlier Banker's Guarantee and shall be for the sum stipulated in Clause 24.1 above. The provisions of Clause 24 shall apply to all Banker's Guarantee procured pursuant to this Clause 24.5.
- 24.6 The Security Deposit, subject to such deductions as made therefrom by the Company, shall be released and/or returned to the Contractor, within SIXTY (60) calendar days of the expiry or termination of this Contract, provided that the Contractor has complied with Clauses 7 to 9, 18, and 20 above.
- 24.7 The Company's rights under this Clause 24 shall be without prejudice to any other rights and remedies available to the Company.

25 SUSPENSION OR TERMINATION

- 25.1 This Contract shall commence from the Effective Date and shall continue to be valid and in effect for as long as the Contractor is providing Services under this Contract unless terminated prematurely in accordance with the terms of this Contract.
- 25.2 The Company may, without prejudice to any other rights it may have, by written notice terminate this Contract or suspend the Contractor's performance of all or any of its obligations under it immediately and without liability of the Company for compensation or damages if:
- 25.2.1 the Contractor, its servants, employees or agents, fail to comply with its express obligation of confidentiality under Clause 31 below;
 - 25.2.2 the Contractor delivers the Software and/or performs the Services which are defective or does not conform with the Requirement Specifications or which design is inadequate and fails to rectify such defect, non-conformity or inadequacy within THIRTY (30) days after being given notice by the Company to do so;
 - 25.2.3 the Software and/or Services or part thereof supplied or to be supplied by the Contractor is declared or advised to be unsafe for use by any competent authority or by any notice, regulation or requirement of any competent authority;
 - 25.2.4 the Contractor fails to comply in any material respects with this Contract and fails to remedy such breach (if capable of remedy) within THIRTY (30) days after being given notice by the Company so to do;
 - 25.2.5 the Contractor commits THREE (3) breaches of the terms of this Contract within any TWO (2) months, whether or not such breaches were in respect of the same

- or different obligation and regardless of whether the Contractor has or has been able to cure such breaches each time they occur;
- 25.2.6 any circumstances arise which give reasonable grounds in the Company's opinion for its belief that the Contractor has or may become incapable of performing any of its obligations under this Contract;
- 25.2.7 the Contractor, its servants, employees or agents, fail to meet the Delivery Schedule;
- 25.2.8 if the Contractor, being a company, shall pass a resolution, or the Court shall make an order that the company shall be wound up (otherwise than for the purposes of amalgamation or bona fide reconstruction), or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a judicial manager, receiver or manager or which entitle the Court to make a winding-up or judicial management order;
- 25.2.9 when the Contractor fails to obtain or maintain the requisite insurance policies referred to in Clause 13 above;
- 25.2.10 when the Contractor terminates the engagement of a sub-contractor without first obtaining the prior written consent of the Company; and
- 25.2.11 where there has been an change in or substitution of the sub-contractors with parties or entities without the Company's prior consent.
- 25.3 Notwithstanding the aforesaid, the Company may by a SIXTY (60)-day written notice terminate this Contract or suspend the Contractor's performance of all or any of its obligations under this Contract, without cause and without liability of the Company for compensation or damages.
- 25.4 In the event of termination under Clause 6.8, 17.5, 25.2 above and Clauses 27.1, 29.4 below, and 8.6.4 (of [Schedule 3](#)), without prejudice to the Company's other rights and remedies:-
- 25.4.1 the Company may in its discretion return the Software or any part thereof, and the Contractor shall refund and repay to the Company any and all monies paid in respect of the Software or such part thereof returned;
- 25.4.2 the Contractor shall refund and repay to the Company any advance payment received from the Company;
- 25.4.3 the Contractor shall indemnify the Company for any direct, indirect or consequential loss, expense or damage suffered or incurred by the Company in connection with such termination; and
- 25.4.4 the Contractor shall compensate the Company for the increased costs in obtaining the Software and/or Services or part thereafter from other sources, and for any loss, expense or damage suffered or incurred by the Company.
- 25.5 After a termination notice is issued and until this Contract is terminated, the Contractor shall only provide components of the Software, and the Company will only pay for such components, in accordance with the unrevoked instructions of the Company pursuant to this Contract. The Contractor shall, at the Company's discretion, provide any components of the Software ordered during the notice period in accordance with the terms and conditions of this Contract.
- 25.6 Where required in the Requirements Specifications or upon the expiration or termination of this Contract (for any reason), unless it is not required by the Company, the Contractor shall provide to the Company, the services necessary for the Company to effect an orderly transition to the Company or to the Company's selected third party, of the Services at no additional cost to the Company for up to the period stated in the Requirement Specifications or SIX (6) months, whichever period is longer ("**Transition Out Period**").
- 25.7 During the Transition Out Period, the Contractor shall continue to provide the Services without any degradation of service. The Contractor's obligations under this Clause shall consist, at a minimum, of the following:

- 25.7.1 meeting the obligations set forth in Clause 26 below;
 - 25.7.2 promptly provide the Company with available detailed specifications and documentation in respect of any hardware, software or other equipment that the Company may require to properly perform, or have performed, the Services following the Transition Out Period;
 - 25.7.3 at the Company's request, train the personnel (as may be designated by the Company) who will be assuming responsibility for the Services and related operations following the Transition Out Period; and
 - 25.7.4 assist in the migration and transfer of all Data and information obtained by the Contractor from the Company, or stored with or processed by the Contractor pursuant to the Services, or collected, created or generated by the Contractor or any third party for the Company pursuant to this Contract, and all relevant software and equipment.
- 25.8 Each Party shall remain responsible for its obligations with respect to actions and events prior to the termination or expiration of this Contract or the relevant Schedule.
- 25.9 All property of the Company made or acquired by the Contractor or coming into their possession or control in any manner whatsoever shall be and remain the sole property of the Company and shall be returned to the Company forthwith on demand at any time or without demand upon the expiration or termination of this Contract. Additionally, the Contractor shall return to the Company or, as the Company may instruct, dispose of, all copies of all documents, papers, specifications, source codes and other materials belonging to the Company being in the Contractor's possession or under its control, including any such materials which incorporate Personal Data, and not intended under the terms of this Contract to remain in the possession or under the control of the Contractor, and shall certify in writing to the Company that the same has been done

Partial Termination

- 25.10 For the purposes of this Contract, all references to termination of this Contract shall mean, at the Company's sole and absolute discretion and election, a complete termination or partial termination of this Contract.
- 25.11 In the event of a partial termination of this Contract, the Company may terminate the Contractor's provision of any part of the Software and/or Services. Such termination shall take effect in accordance with the terms of this Contract relevant to the termination. All terms and conditions of this Contract shall continue to apply with respect to such part of this Contract, the Company has not terminated.

26 EXIT

- 26.1 Prior to or upon the termination of this Contract or the Transition Out Period (whichever event is the last to occur) ("**Exit Date**"):
- 26.1.1 the Contractor shall deliver to the Company a copy of any IP that does not belong to the Company in the form in use as of the Exit Date, including all source codes and documentation relating to the same, and any licence granted to the Company in respect of (a) Intellectual Property that may belong to the Contractor, (b) the Contractor's confidential information and (c) all proprietary rights in respect of the foregoing, shall continue to be in force;
 - 26.1.2 in connection with Intellectual Property which does not belong to the Contractor but was used by the Contractor to provide the Services as of the Exit Date, the Contractor shall use its best endeavours to transfer, assign, or sublicense such third party Intellectual Property to the Company and its designee(s) at no additional cost or at cost and on terms reasonably acceptable to the Company;
 - 26.1.3 with respect to any third party equipment used by the Contractor to provide the Services as of the Exit Date, the Contractor shall use its best endeavours to transfer or assign such leases, agreements or right to use such equipment to the

- Company or its designee(s) at no additional cost or at cost and on terms reasonably acceptable to the Company; and
- 26.1.4 the Contractor shall, if required by the Company transfer, assign or sell to the Company or its designee(s) the Contractor equipment being used by the Contractor to perform the Services as of the Exit Date in accordance with the following terms:
- 26.1.4.1 the Contractor equipment shall be free and clear of all liens, security interests, or other encumbrances;
- 26.1.4.2 the sale price shall be the Contractor equipment's Net Book Value or at fair market value, whichever is the lower. For the purposes of this Clause, "Net Book Value" of the Contractor equipment shall be the price paid by the Contractor for the Contractor equipment less the depreciation costs of the Contractor equipment, which depreciation shall be based on a straight line depreciation over a FIVE (5) year period, which period commences from the date of the purchase of the equipment; and
- 26.1.4.3 parties shall enter into a sale and purchase agreement on the Company's terms to effect the sale.
- 26.2 The Company shall have the unfettered right to contract directly with any party whom may have provided goods or services to the Contractor in connection with the Contractor's provision of the Software or Services to the Company.
- 26.3 Upon expiration or termination of this Contract, the Contractor shall not terminate, reassign or otherwise re-designate any member of the Contractor's personnel who were directly involved in the provision of the Software and/or Services to the Company until and unless the Company indicates to the Contractor that the Company has no intention of hiring those personnel or recommend the hire of those personnel to the Company's intended new service provider or supplier of goods. Where the Company intends to hire such Contractor's personnel or make a recommendation to the Company's intended new service provider or supplier of goods, the Contractor shall:
- 26.3.1 provide the Company, subject to any limitation imposed by law, all available information that the Contractor has with respect to the personnel concerned;
- 26.3.2 permit the Company or the intended new service provider or supplier of goods access to the personnel concerned; and
- 26.3.3 allow the Company or the intended new service provider or supplier of goods to hire such personnel and in that regard, the Contractor hereby waives any and all restriction (whether between itself and the personnel concerned or between itself and the Company or between itself and the intended new service provider) which may operate to prevent, frustrate or otherwise thwart the Company's or the intended new service provider's attempt to hire such personnel.
- 26.4 The Contractor shall inform the Company of any agreements or arrangements that it has with any third party which are necessary or useful for the Company or the intended new service provider to perform the Services or intended new supplier of goods to provide the Software. Where required by the Company, the Contractor shall arrange for an assignment of such agreements or arrangements with the third parties either to the Company or the Company's or the intended new service provider or supplier of goods.

27 GIFTS, INDUCEMENTS AND REWARDS

- 27.1 The Company shall be entitled to terminate this Contract immediately with Clause 25.4 above to apply, if the Contractor shall have offered or given or agreed to give to any person (including employees of the Company) any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forbearing to do any action in relation to the obtaining or execution of this Contract with the Company or for showing or forbearing to show favour to any person in relation to any contract with the

Company or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Company the Contractor or any other person employed by him or acting on its behalf shall have committed an offence under the Penal Code (Cap. 224) or the Prevention of Corruption Act (Cap. 241) or any other statutory modification or re-enactment thereof for the time being in force in Singapore or shall have abetted or attempted to commit such offence or shall have given any fee or reward the receipt of which is an offence under the Penal Code (Cap. 224) or the Prevention of Corruption Act (Cap. 241) as the case may be or any statutory modification or re-enactment thereof for the time being in force in Singapore.

28 AUDIT

- 28.1 The Contractor shall allow the Company to conduct periodic audits at all locations and premises in which the Contractor is providing or has provided goods or services under this Contract to ensure that there are proper controls and compliance with this Contract and to monitor the provision of the Services and the Software, to satisfy itself as to the status and quality of the Services and Software and/or to witness the conduct of any testing. Audits may be conducted by the Company or by a third party appointed by the Company ("**Audit Representative**"). The Contractor shall cooperate with and provide support, information and assistance to the Company and/or its Audit Representative for the purpose of such audits. The Contractor shall provide all support necessary for the conduct of the audits at no additional cost to the Company.
- 28.2 The Contractor shall grant the Company the right of free access to any test environment or the design, development premises and the provision of all reasonable facilities as may be required to give effect to Clause 28.1 above. Without prejudice to the foregoing, the Company may conduct surprise spot checks on any locations and premises in which the Contractor is providing or has provided Services under this Contract for the purpose of such audits.

29 DISASTER RECOVERY

- 29.1 The Contractor shall within FOUR (4) weeks from the Effective Date, provide to the Company for its approval a detailed disaster recovery and business continuation plan ("**Disaster Recovery Plan**") in accordance with the Requirement Specifications. Upon approval, the Disaster Recovery Plan shall form part of this Contract. During the term of this Contract, the Contractor shall implement and comply with the Disaster Recovery Plan.
- 29.2 The Contractor shall on a regular basis, test and successfully certify to the Company that the disaster recovery and the information technology components of the disaster recovery services to be provided by the Contractor pursuant to the Disaster Recovery Plan is fully operational and capable of restoring operations so that the Software can provide the functionalities in accordance with the Service Level Standards and also within the timelines approved by the Company.
- 29.3 In the event of a disaster or business interruption (including a force majeure event), the Contractor shall at a minimum restore the Software to the minimum functionalities set forth in the Disaster Recovery Plan ("**Minimum Functionalities**").
- 29.4 In the event that:
- 29.4.1 the Minimum Functionalities are not provided in accordance with the Disaster Recovery Plan within the time frames set forth therein; and/or
 - 29.4.2 the Contractor does not implement, or cause to be implemented, the Disaster Recovery Plan,

the Company may terminate this Contract upon notice to the Contractor without regards to any cure period with Clause 25.4 above to apply.

29.5 In the event of a disaster, the Contractor shall not increase its charges under this Contract or charge the Company any additional fees in addition to the fees under this Contract.

30 FORCE MAJEURE

30.1 Neither Party shall be liable for any loss, damage or penalty resulting from delays or failures in performance of their obligations under this Contract if the delay or failure results from events beyond the reasonable control of either Party (a "**Force Majeure Event**").

30.2 For the purposes of this Contract, Force Majeure Events shall include, but are not limited to, acts of God, war, hostility, invasion, act of foreign enemies, rebellion, revolution, riots, civil war, disturbances, requisitioning or other acts of civil or military authority, laws, regulations, acts or orders of any governmental authority, body, agency or official, fires, inclement weather, rain or floods (however caused), strikes, lock-outs or other labour disputes, epidemics, outbreaks, embargoes or other catastrophes affecting the availability of materials or labour necessary for the performance of this Contract.

30.3 For the avoidance of doubt, the failure to obtain the approval or the withdrawal of approval from the relevant government authorities or other governing bodies shall not be considered a Force Majeure Event and the provisions of this Clause shall not apply to such an event.

30.4 The Contractor shall prepare and submit to the Company within TWO (2) weeks from the date of signing of this Contract, the Contractor's plans, strategies and steps the Contractor would take in order to continue to provide the Company with the Services in a Force Majeure Event or the outbreak of infectious disease affecting humans. Such plan, strategies and steps shall state whether the Services would be provided at the same service level or at some other service level. If the Services are to be provided at some other service level, the Contractor shall identify those other service levels. The Contractor shall not put any such plan, strategy or steps in place until and unless the Contractor has obtained the Company's approval of the same.

30.5 The Parties hereto agree to notify the other Party promptly of any such circumstances delaying its performance and to resume performance as soon thereafter as is reasonably practicable.

30.6 If any Force Majeure Event shall continue for a period exceeding ONE HUNDRED AND TWENTY (120) days, then either Party may at any time thereafter, upon giving written notice to the other, elect to terminate this Contract.

30.7 In any of the events mentioned in Clause 30.2 above, the Parties shall for the duration of such event be relieved of any obligation under this Contract as is affected by the event except that the provisions of this Contract shall remain in force with regard to all other obligations under this Contract which are not affected by the event. The Parties agree that the Company shall not be under any obligation to pay for any component of the Software or Service which it did not receive from the Contractor during the continuation of the Force Majeure Event.

30.8 Notwithstanding any of the foregoing provisions in this Clause 30, the Parties acknowledge and agree that the outbreak of pandemic illness (including any outbreak of avian flu or other forms of communicable illness at the community level) ("**Pandemic**" and each a "**Pandemic Illness**") is not a Force Majeure Event. However, the Parties acknowledge that any Pandemic may impact on the performance of each Party's employees, subcontractors or agents assigned to this Contract ("**Staff**") and solely for this purpose the Parties agree to the following:

30.8.1 each Party will extend safeguards and measures adopted to reduce the risk of its Staff transmitting any Pandemic Illness to the other Party's Staff in the course of their performance of this Contract;

- 30.8.2 each Party agrees that if it would not reasonably require its Staff to attend at any premises due to risk of contracting a Pandemic Illness, it would not require the other Party's Staff to attend at such premises as well;
- 30.8.3 each Party agrees to respect any quarantine orders issued to the other Party's Staff under the Infectious Disease Act or under the other Party's general corporate policy concerning such Pandemics;
- 30.8.4 each Party will bear its own costs or expenses of adopting its own safeguards and measures under its general corporate policy concerning Pandemic Illnesses;
- 30.8.5 the Parties agree to consider and implement workarounds to reduce the risk of their Staff contracting any Pandemic Illnesses, including the use of telephone conferencing and where the Services to be performed are non-location specific, to perform such Services at alternative locations; where the Services are required to be performed on-site, the Company shall supply, at no charge to the Contractor, agreed facilities for the Contractor's Staff to perform the Services;
- 30.8.6 the Parties may mutually agree to reasonable adjustments in the Contract Price, Implementation Plan, Delivery Schedule and other relevant obligations of the Parties under this Contract;
- 30.8.7 if the Pandemic situation in Singapore worsens materially after the Effective Date, to the extent that the Pandemic situation directly causes the unavailability of either Party's Staff so as to materially delay the completion of a major milestone ("**Project Delay**"), each Party shall be entitled to make justifiable adjustments to the Implementation Plan and Delivery Schedule strictly to compensate for Project Delay only, provided always that (i) any postponement of any events in the Implementation Plan and Delivery Schedule cannot exceed FORTY-FIVE (45) days in aggregate; (ii) the written notice must be given the other Party promptly and in any case within THIRTY (30) days of such Project Delay occurring; and (iii) the written notice must identify the Party's Staff who were unavailable and specify the time period in which such Staff were unavailable; and
- 30.8.8 notwithstanding Clause 5.6 of [Schedule 3](#), the Contractor may replace its Staff who are performing the Services with staff of equivalent or better competence and qualification if and only if the Contractor certifies to the Company in writing that such Staff has on his own accord refused to continue participation in the performance of Services due to his concerns of contracting a Pandemic Illness and not for other reasons and FURTHER PROVIDED that the replacement shall have undergone, prior to assuming his duties, a suitable period of familiarisation with his or her predecessor and there shall be no disruption to the provision of any services by the Contractor prior, during and after the handing over between the out-going and incoming staff member.

31 CONFIDENTIALITY

- 31.1 The Contractor hereto agrees to treat as confidential all information received from the Company or its Affiliates where such information has been indicated in writing or labelled to be "Confidential", "Proprietary Information" or where the circumstances of disclosure indicates that the information so disclosed is confidential or proprietary, or which the Contractor may acquire in relation to the Company or its Affiliates, including but without any limitation whatsoever, all business information, strategic and development plans, medical records, Personal Data and any other matter concerning the Company or its Affiliates, its affairs, business, shareholders, directors, officers, business associates, clients, patients (including their identity) or any other person or entity having dealings with the Company or its Affiliates; information relating to the financial condition of the Company or its Affiliates, their accounts, audited or otherwise, notes, memoranda, documents and/or records in any form whatsoever whether electronic or otherwise, and all records indicative of the financial health and status of the Company or its Affiliates; technical information in any form whatsoever whether electronic or otherwise; information in any form whether electronic or otherwise, relating to methods, processes, formulae, compositions, systems, techniques, inventions, machines, computer programs, software, development codes and research projects; business plans, co-developer/collaborator identities, data, business records of every nature, customer lists and client database, pricing data, project records, market reports, sources of supply, employee lists, business

manuals, policies and procedures, information relating to technologies or theory and all other information which may be disclosed by the Company or its Affiliates to the Contractor or which the Contractor may be provided access by the Company or its Affiliates whether stored electronically or otherwise; all information which is deemed by the Company to be confidential information or which is generated as a result of or in connection with the business of the Company or its Affiliates and which is not generally available to the public; and all copies, reproductions and extracts thereof, in any format or manner of storage, whether in whole or in part ("**Confidential Information**"). The Contractor shall ensure that, where applicable, none of the patients of the Company or the Affiliates can be identified in any reports, submissions and publications of the Contractor. For avoidance of doubt, any Confidential Information of the Company's Affiliates shall be deemed to be Confidential Information of the Company.

- 31.2 The Contractor shall not, without the prior written consent of the Company, disclose any Confidential Information or any information relating to this Contract or any of the contents hereof whether directly or indirectly to any other party.
- 31.3 The restrictions on disclosure of Confidential Information described in above do not extend to any information that:
 - 31.3.1 already exists in the public domain at the time of its disclosure;
 - 31.3.2 is already in the Contractor's possession;
 - 31.3.3 is independently developed by the Contractor outside the scope of this Contract;
or
 - 31.3.4 is rightfully obtained by the Contractor from third parties.
- 31.4 The Contractor hereby agrees that it shall:
 - 31.4.1 take all steps to limit access to Confidential Information to those principals, directors, officers, agents, employees, representatives, consultants, independent contractors and professional advisors who are directly concerned with the purposes contemplated by this Contract and are made aware of its confidential status, to the extent reasonably required for the performance of this Contract, and ensure that they do not disclose or make public or authorise any disclosure or publication of any Confidential Information in violation of this Contract;
 - 31.4.2 not use any Confidential Information for any purpose other than the purposes for which it is intended, pursuant to and in accordance with the terms of this Contract;
 - 31.4.3 upon the Company's request, procure the Contractor's employees, servants or agents or any employee, servant or agent of the Contractor's sub-contractor, to sign individual Non-Disclosure Agreements with the Company on such form that the Company may dictate.
- 31.5 The Contractor must promptly inform the Company about any unauthorised disclosure of the Company's Confidential Information.
- 31.6 The Contractor shall in relation to Personal Data, also:-
 - 31.6.1 ensure that it has, in relation to all Personal Data obtained and/or collected by it under this Contract in connection with its obligations under said Contract, fully complied with all requirements of the Personal Data Protection Act (No. 26 of 2012);
 - 31.6.2 process Personal Data only in accordance with the written instructions given by the Company and to such extent necessary and appropriate for the purposes of this Contract or such other purposes approved by the Company in writing;
 - 31.6.3 promptly deal with any enquiry from the Company relating to the Contractor's processing of Personal Data;
 - 31.6.4 not transfer or allow the Personal Data to be transferred, outside of Singapore, unless expressly instructed or authorised by the Company; and

31.6.5 provide all necessary co-operation and assistance (whether to the Company or otherwise) to allow access and/or correction of Personal Data in accordance with the Personal Data Protection Act 2012.

31.7 Subject to the foregoing, the Contractor's confidentiality obligations under this Clause shall survive the expiry or termination of this Contract.

32 PERSONAL DATA

32.1 Without prejudice to Clause 31 above, the Contractor shall take all reasonable measures to ensure:

32.1.1 that any Personal Data belonging to the Company which is held by the Contractor pursuant to this Contract is protected against loss, unauthorised access, use, modification, disclosure or other misuse, and that only authorised personnel have access to that Personal Data;

32.1.2 that, to the extent that the Personal Data is no longer required by the Contractor for legal or business purposes, that Personal Data is destroyed or re-delivered to the Company in accordance with Clause 25.9 above;

32.1.3 that the Company is immediately alerted in writing (with full particulars) of any unauthorised access, disclosure or other breach of this Clause and the Contractor undertakes, as soon as reasonably practicable, all steps to prevent further unauthorised access, disclosure or other breach of this Clause 32 (including providing the Company with such reports or information concerning such steps as and when requested by the Company); and

32.1.4 it keeps itself apprised of any and all notices and circulars which the Company may from time to time notify to the Contractor, including without limitation any policies, guidelines, circulars or notices relating to personal data ("**PDPA Documentation**"), and to perform its duties or discharge its liabilities pursuant to this Contract in a manner which is consistent with the PDPA Documentation, and will not cause the Company to be in breach of the same.

32.2 For the purposes of Clause 32.1.4 above, the Contractor hereby expressly acknowledges and agrees that it has read the PDPA Documentation and is aware of and will compensate the Company for any and all potential loss and damage caused to the Company arising from or in connection with any breach of the above. The Contractor will indemnify and hold the Company harmless from claims or proceedings by third parties and any proceedings, investigations, orders, directions, judgments issued by a court, statutory body or regulatory authority, in connection with any breach of this obligation. The Contractor further agrees that any unauthorised processing of Personal Data by the Contractor may cause immediate and irreparable harm to the Company for which money damages may not constitute an adequate remedy. In such event, the Contractor agrees that the Company may seek injunctive relief as appropriate.

32.3 Notwithstanding and further to anything stated elsewhere in the Contract, the Company reserves the right and the Contractor agrees that the Company may conduct (or appoint a qualified, independent third party to conduct) an audit and/or assessment of the standard of compliance or non-compliance by the Contractor with the obligations under this Clause 32.

32.4 To the extent that Contractor sub-contracts its obligations under this Contract to a sub-contractor, the Contractor agrees and acknowledges that it shall ensure that this Clause 32 is incorporated into the sub-contractor's contract.

32.5 Subject to the foregoing, the Contractor's obligations under this Clause shall survive the expiry or termination of the Contract.

32.6 A reference to the Company in this Clause includes a reference to the Company's Affiliates.

33 COMPLIANCE WITH LAW

- 33.1 The Contractor shall ensure at all times that in its performance of this Contract it shall conform in all respects with the provisions of all laws of Singapore. The Contractor shall ensure that the Software and the Services provided by the Contractor shall not cause the Company, the Affiliates and their respective directors, officers, departments, employees, servants and agents to be in breach of any laws, regulations, promulgations, terms and legal obligations for the time being in force and in the future, including but not limited to the provisions of the Personal Data Protection Act 2012 and the provisions of the Private Hospitals and Medical Clinics Act (Chapter 248) including any amendments thereto.
- 33.2 The Contractor agrees to indemnify the Company, the Affiliates and their respective directors, officers, departments, employees, servants and agents, against all penalties and liabilities of every kind for the Contractor's failure to comply with this Clause 33.

34 VARIATION OF CONTRACT

- 34.1 The provisions of this Contract shall not be varied, except by agreement in writing signed by the duly authorised representatives of both Parties.
- 34.2 If either Party wishes to vary this Contract, the proposing Party shall submit a copy of the proposed variations to the other Party ("**the Receiving Party**"), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal.
- 34.3 If the Receiving Party accepts the variations, this Contract shall be deemed to be so amended from the date of acceptance. If the Receiving Party rejects the proposed variations, each Party shall perform this Contract in accordance with the unvaried terms.

35 DISPUTE RESOLUTION

- 35.1 In the event of any dispute or difference arising out of or in connection with or in relation to this Contract, including any question regarding the existence, validity, termination, application or interpretation of this Contract or any of its provisions, both Parties shall use their best endeavours to settle the dispute informally by agreement between the Parties. Both Parties shall always act in good faith and co-operate with each other to resolve any disputes.
- 35.2 Notwithstanding anything in this Contract, if the dispute is not settled in accordance with Clause 35.1 above, the dispute shall be resolved by arbitration or by court proceedings as elected by the Company by way of a written notice to the Contractor. If no election is made by the Company within SEVEN (7) days of a written request of the Contractor to the Company to make such election (which request shall provide details of the dispute to be resolved), the dispute shall be resolved by arbitration as the default.
- 35.3 If any dispute is to be resolved by court proceedings, the parties hereby agree to submit to the exclusive jurisdiction of the Singapore Courts.

Arbitration

- 35.4 If any dispute is to be resolved by arbitration, the arbitration shall be conducted in Singapore in the English language in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference into this Clause 35, except in so far as such Rules conflict with the provisions of this Clause 35, in which event the provisions of this Clause 35 will prevail.
- 35.5 The arbitration tribunal shall consist of ONE (1) arbitrator to be appointed by mutual agreement between the Parties. Either Party may propose to the other the name or names of ONE (1) or more persons to serve as the arbitrator. If no agreement is reached

within THIRTY (30) days after receipt by ONE (1) Party of such a proposal from the other, the arbitrator shall be appointed by the Appointing Authority.

- 35.6 The Appointing Authority shall be the Chairman of the SIAC.
- 35.7 The arbitrator must not be a present or former employee or agent of, or consultant or counsel to, either Party or any related corporation as defined in Section 6 of the Companies Act (Cap. 50) of either Party.
- 35.8 Any decision or award of an arbitration tribunal appointed pursuant to this Clause 35 will be final and binding on the Parties.
- 35.9 Interest at the annual rate of SIX percent (6%) per annum will be due and payable to the Party in receipt of an arbitration award from such date as the arbitration tribunal may decide until the date of payment to such Party.
- 35.10 The Parties hereto undertake to keep the arbitration proceedings and all information, pleadings, documents, evidence and all matters relating thereto confidential.
- 35.11 For the avoidance of doubt, it is agreed that nothing in this Clause 35 shall prevent a Party from seeking urgent equitable relief before any appropriate court and the commencement of any dispute resolution proceedings shall in no way affect the continual performance of the Parties' obligations under this Contract.

36 ASSIGNMENT AND SUBCONTRACTING

- 36.1 Subject to the other provisions of this Contract, all the terms and conditions of this Contract shall be binding upon and enure to the benefit of the Parties and their respective heirs, permitted assigns and successors-in-title except that:-
 - 36.1.1 the Contractor shall not transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any third party without the prior written consent of the Company, which consent shall not be unreasonably withheld;
 - 36.1.2 Notwithstanding the above, the Company shall have the right to transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any of its Affiliates or to its parent company upon written notice to the Contractor. In the event that such transfer is by way of a novation, the Contractor shall execute any such novation agreement prepared by the Company and presented to the Contractor so as to give effect to the provisions of this Clause 36;
 - 36.1.3 any permitted assignee or transferee shall agree in writing to comply with all terms and conditions of this Contract; and
 - 36.1.4 any assignment shall not exceed the existing scope of this Contract.
- 36.2 In particular, the Contractor may not subcontract the performance of any Services hereunder, without the prior written consent of the Company. In connection with such consent, the Company may require the execution by such subcontractor(s) of an agreement to be prepared by the Company. The Contractor shall remain fully responsible for any its obligations subcontracted, as permitted hereunder, and the Contractor shall be solely responsible for payment due to such subcontractors.
- 36.3 Approval of any subcontractor by the Company shall not constitute a superseding event or waiver of any right of the Company to reject work that is not in conformance with the standards set forth in this Contract, and does not constitute nor imply authorisation of expenses in excess of the Contract Price.

37 WAIVER

- 37.1 No waiver of any breach of any covenant, condition, stipulation, obligation or provision contained or implied in this Contract shall operate or be interpreted as a waiver of another

breach of the same or of any covenant, condition, stipulation, obligation or provision of this Contract.

- 37.2 Any time or other indulgence granted by the Company under this Contract shall be without prejudice to and shall not be taken as a waiver of any of the Company's rights under this Contract nor shall it prejudice or in any way limit or affect any statutory rights or powers from time to time vested in or exercisable by the Company.

38 RELIANCE

- 38.1 The Contractor accepts that the Company, *inter alia*, relies on the skill and judgment of the Contractor in the description and quality of the Software to be provided and on the judgment and skills of the Contractor for any and all of the Services to be performed.

39 INSOLVENCY

- 39.1 The Company may at any time by notice in writing terminate this Contract without compensation to the Contractor in any of the following events:

39.1.1 if the Contractor, being an individual or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order or administration order made against him over any part of his assets or undertaking on behalf of his debenture holders or creditors, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or

39.1.2 if the Contractor, being a company, shall pass a resolution, or the Court shall make an order that the company shall be wound up (otherwise than for the purposes of amalgamation or bona fide reconstruction), or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a judicial manager, receiver or manager or which entitle the Court to make a winding-up or judicial management order.

PROVIDED ALWAYS THAT such determination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Company.

- 39.2 Any termination under Clause 39.1 above shall discharge the Parties from any liability for further performance of this Contract and the Company shall have the right to be repaid forthwith any sums previously paid under this Contract (whether paid by way of a deposit or otherwise) and to recover from the Contractor the amount of any loss or damage sustained or incurred by the Company as a consequence of such termination.

40 NOTICES

- 40.1 Except as otherwise provided in this Contract, notices which are required to be given in or under this Contract shall be in writing (unless expressly stated otherwise). Notices may be sent by hand or by AR Registered post or certified mail, return receipt requested, postage prepaid and properly addressed to the offices of the Parties as specified below or to such other address as the Party may later specify.

If to Company:

National Healthcare Group
Attention: Director, Group Purchasing Office
3 Fusionopolis Link
#03-08, Nexus@one-north
Singapore 138543

With a copy to:
Integrated Health Information Systems

Attention: Group Director
6 Serangoon North Avenue 5
#01-01/ 02
Singapore 554910

If to Contractor:

<Contractor Name>
Attention: <Designation>
<Contractor Address>

- 40.2 Every notice or communication so sent shall be deemed to have been properly served and validly made, if by hand when delivered to the recipient's address and if sent by AR Registered post, TWO (2) days after posting if posted to an address within Singapore and EIGHT (8) days after posting, if posted to an address outside Singapore, notwithstanding the fact that the letter may be returned by the Post Office undelivered.

41 ENTIRE AGREEMENT

- 41.1 The Parties expressly acknowledge that they have read this Contract and understood its provisions. The Parties agree that this Contract and all Schedules annexed to the same constitute the entire agreement between them with respect to the subject matter of this Contract and that it supersedes all prior or contemporaneous proposals, agreements, negotiations, representations, warranties, understandings, correspondence and all other communications (whether written or oral, express or implied) or arrangements entered into between the Parties prior to this Contract in respect of the matters dealt with in it. No promise, inducement, representation or agreement other than as expressly set forth in this Contract has been made to or by the Parties.
- 41.2 There are no assumptions, dependencies, conditions or constraints which would affect the Contractor's performance or compliance with this Contract or otherwise negate any of the provisions in this Contract, unless such assumptions, dependencies, conditions or constraints are specifically contained in [Schedule 5](#).

42 SEVERABILITY

- 42.1 In the event that any term, condition or provision of this Contract or the application of any such term, condition or provision shall, to any extent, be held by a court of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or a violation of any applicable law, statute or regulation of any jurisdiction, the same shall be deemed to be deleted from this Contract and shall be of no force and effect; whereas the remaining terms and provisions of this Contract shall remain in full force and effect as if such term, condition and provision had not originally been contained in this Contract, unless the severed provisions render the continuing performance of this Contract impossible, or materially change either Party's rights or obligations under this Contract; in which event, such Party may give written notice of its intent to terminate this Contract to the other Party.
- 42.2 Notwithstanding the aforesaid, in the event of such deletion, the Parties hereto shall negotiate in good faith in order to agree to terms of mutually acceptable and satisfactory alternative provisions in place of the provision(s) so deleted.

43 REASONABLENESS

- 43.1 Both Parties agree that the clauses in this Contract are reasonable. In construing the clauses herein, the clauses shall not be construed *contra proferentum* against the Company.

44 LANGUAGE

- 44.1 All business relating to this Contract, both written and verbal, shall be conducted in the English language.

45 SURVIVAL CLAUSE

- 45.1 Clauses 4.7, 4.8, 6.8, 7.3, 11, 12.4 to 12.8, 16, 17, 18.1, 22, 24.6, 25.4 to 25.8, 26, 27, 28, 31, 32, 33.2, 35, 39.2, 45 above and all other clauses of this Contract (including the Schedules) so intended to survive after the termination or expiration of this Contract shall survive such termination or expiration.

46 INDEPENDENT CONTRACTOR / NO PARTNERSHIP

- 46.1 The Parties are independent contractors. Save as expressly provided in this Contract or by express agreement in writing between the Parties, nothing in this Contract shall be deemed to constitute a partnership between the Parties or constitute any Party the employee, agent, partner or legal representative of the other Party for any purpose or otherwise entitle either Party to have any right, power or authority to create any obligation or responsibility of any kind, express or implied on behalf of the other. Further, the Parties agree that neither Party has the right to bind or commit the other Party for any purpose in any way whatsoever or control any activity of the other Party outside the terms of this Contract.

47 NO THIRD PARTY BENEFICIARIES

- 47.1 Apart from the Company's Affiliates, nothing contained in this Contract is intended to confer upon any person (other than the Parties hereto) any rights, benefits or remedies of any kind or character whatsoever or any right to enforce the terms of this Contract under the Contracts (Rights of Third Parties) (Cap 53B), and no person other than the Company's Affiliates shall be deemed to be a third party beneficiary under or by reason of this Contract.

48 USE OF NAME

- 48.1 Except as may be necessary for either Party to carry out its obligations under this Contract, neither Party shall under any circumstances whatsoever use the other Party's name, trade names, trademarks, service marks, logos, or other symbols or other source identifying devices, or combinations or variations thereof, or the name of any employee of either Party, in any public announcement, news release, advertising, or promotional literature, without first obtaining the written consent and approval of the other Party.

49 GOVERNING LAW

- 49.1 This Contract shall be deemed to be made in Singapore and subject to, governed by and construed in all respects in accordance with the laws of the Republic of Singapore for every intent and purpose.
- 49.2 The application of the United Nations Convention on Contracts for the International Sale of Goods 1980 to this Contract is hereby expressly excluded.

50 EXECUTION IN COUNTERPARTS

- 50.1 This Contract may be executed in ONE (1) or more counterparts by the duly authorised representatives of the Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute ONE (1) and the same agreement PROVIDED ALWAYS THAT this Contract shall be of no force and effect until the counterparts are exchanged.

SCHEDULE 1
FORM OF BANKER'S GUARANTEE

TO:

The Company

Dear Sirs,

OUR PERFORMANCE GUARANTEE NO. : _____
FOR THE SUM OF SGD _____

Whereas on the << DATE >>, an agreement hereinafter called the "**Contract**") was made between << NAME OF CONTRACTOR >> of << CONTRACTOR ADDRESS >> (hereinafter called "**the Contractor**") of the one part and National Healthcare Group Pte. Ltd. ("**the Company**") of the other part whereby the Contractor agreed to the supply of << BRIEF DESCRIPTION OF CONTRACT >> to the Company for the sum of Singapore Dollars << AMOUNT IN WORDS >> (S\$ << AMOUNT IN FIGURES >>).

And whereas the Contractor is required under the Contract to pay Singapore Dollars << AMOUNT IN WORDS >> (S\$ << AMOUNT IN FIGURES >>) ("**the Guaranteed Sum**") as a security deposit for the due performance and observance of all the conditions, obligations and stipulations contained in the Contract.

Now in consideration of you agreeing at the Contractor's request to accept a Banker's Guarantee in lieu of cash deposit of Singapore Dollars << AMOUNT IN WORDS >> (S\$ << AMOUNT IN FIGURES >>), we << NAME OF BANK >> of << BANK ADDRESS >> (hereinafter called "**the Guarantor**") hereby undertake as follows:

1. Upon receipt of your written demand for payment, we shall pay you the sum demanded to you within 7 working days. We confirm that your written demand shall be final and conclusive evidence that the sum stated therein is in fact due and owing to you by the Contractor:
2. The Guarantee contained herein shall not be discharged or otherwise affected by our loss of capacity, by any change in our name or by our objects, capital structure or constitution or by the sale of our business or part thereof, or on account of our amalgamation and shall continue to apply to all the Contractor's liabilities hereto in respect of the resulting entity after such sale or our amalgamation.
3. For the purpose of this Guarantee, we expressly waive any right we may have under any law to require that you proceed against the Contractor or any other person or to take any other procedure or steps other than as specified herein prior to proceedings against us under this Guarantee.
4. We shall not be discharged or released from this Guarantee by any arrangement made between the Contractor and you with or without our assent or by an alteration to the obligations undertaken by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
5. This Guarantee represents the entire agreement between the parties in respect of the Guarantee and none of the parties shall be bound by any representation or promise made by any party not contained in this Guarantee. This Guarantee shall be binding and effective from << INSERT START DATE >> and shall remain in full force and effect till:-
 - (a) << INSERT DATE >>;
 - (b) the date the Guaranteed Sum is automatically reduced to zero hereunder;

- (c) the date we receive the original of this Guarantee for cancellation; or
- (d) the date you expressly discharge us from our obligations hereunder in writing;

whichever date is the earliest ("**the Expiry Date**").

PROVIDED ALWAYS that we may at any time without being required to do so pay to you the undrawn portion of the Guaranteed Sum in full, whereupon our liability hereunder shall immediately cease and determine.

6. Notwithstanding the Expiry Date, we undertake to pay upon your demand for payment if it is made and received by us within three (3) months from the Expiry Date, after which our liability under this Guarantee shall automatically cease and be discharged and your rights under this Guarantee shall be extinguished and this Guarantee shall be null and void.
7. Your right under this Guarantee are cumulative and you may make more than one demand on this Guarantee so long as the demands are made within three (3) months from the Expiry Date of this Guarantee and the total demands do not exceed the Guaranteed Sum PROVIDED ALWAYS that the Guaranteed Sum shall be automatically reduced by the amount of any sum or sums paid hereunder, and our total liability hereunder shall in no circumstance exceed the aggregate of the Guaranteed Sum.
8. The benefit and rights under this Guarantee are not assignable by the Company without our prior written consent. Any demand by an assignee approved by us must be accompanied by the original copy of the Guarantee.
9. In the event that any term, condition or provision of this Guarantee or the application of any such term, condition or provision shall to any extent, be held by a court of competent jurisdiction to be illegal, invalid, unenforceable or a violation of any applicable law, statute or regulation of any jurisdiction, the same shall be deemed to be deleted from this Guarantee and shall be of no force and effect; whereas the remaining terms and provisions of this Guarantee shall remain in full force and effect as if such term, condition and provision had not originally been contained in this Guarantee unless the severed provisions render the continuing performance of this Guarantee impossible, or materially change either party's rights or obligations under this Guarantee; in which event, such party may give written notice of its intent to terminate this Guarantee to the other party. Notwithstanding the aforesaid in the event of such deletion, the parties hereto shall negotiate in good faith in order to agree to terms of mutually acceptable and satisfactory alternative provisions in place of the provision(s) so deleted.
10. This Guarantee shall be subject to, governed by and construed in all respects in accordance with the laws of the Republic of Singapore. By accepting this Guarantee, we hereby irrevocably submit to the exclusive jurisdiction of the Courts of the Republic of Singapore to settle any and all disputes in connection with this Guarantee.

SCHEDULE 2

PRICING

<To Be Inserted>

SCHEDULE 3

ADDITIONAL TERMS AND CONDITIONS

This [Schedule 3](#) sets out the additional terms and conditions that apply to the Services provided by the Contractor.

1 DEFINITIONS

1.1 In this [Schedule 3](#), unless the context otherwise requires, the following words and expressions shall have the meaning assigned hereunder:

Acceptance Criteria	means in relation to the Software the test criteria for the Software's compliance with the Requirement Specifications carried out in accordance with Clause 8 of this Schedule 3 and the Acceptance Test Procedures;
Acceptance Date	means the date on which the Company accepts the Software or is deemed to have accepted the Software under Clause 8 of this Schedule 3 ;
Acceptance Test Procedures	means in relation to the Software the procedures for testing the Software's compliance with the Requirement Specifications, developed in accordance with Clause 8 of this Schedule 3 , including the test procedures set out in Clause 9 of the General Terms and Conditions for the supply of the Software and/or Services;
Annual Service Charge	means the fixed annual charges payable for the Maintenance Services as specified in <Annex 3 of this Schedule 3 > < Schedule 2 >;
Business Hours	is as defined in Clause 5.7 of this Schedule 3 ;
Certificate of Acceptance	means the certificate issued by the Company to the Contractor in accordance with Clause 8.3.2 of this Schedule 3 ;
Change Request	is as defined in Clause 7.1.1 of this Schedule 3 ;
Client Executive	means the Contractor's employee who shall be the primary point of contact for the Contractor in respect of the day to day matters relating to the performance of the Software and the Maintenance Services;
Commissioning	means putting the Software into operation in its production environment with "live" data after the issue of the Certificate of Acceptance as more fully described in Clause 8.4 of this Schedule 3 ;
Commissioning Date	means the date of expiry of the Commissioning Period which shall not be earlier than [THREE (3) months] from the Acceptance Date as defined in Clause 8.4 of this Schedule 3 ;
Commissioning Period	means the period commencing immediately after the issue of the Certificate of Acceptance as defined in Clause 8.4 of this Schedule 3 ;
Company Personnel	is as defined in Clause 5.8 of this Schedule 3 ;

Data	means all data, including Personal Data, directory structures, applications, access security, sharing permissions and/or other user rights;
Emergency Maintenance	means on-call remedial maintenance;
Executive Committee	is as defined in Clause 4.1 of this Schedule 3 ;
Impact Study	is as defined in Clause 7.1.4 of this Schedule 3 ;
Implementation Plan	means the plan to be submitted by the Contractor showing the delivery schedules and sequence of events necessary for the implementation and Commissioning of the Software;
Implementation Services	is as defined in Clause 3.1 of this Schedule 3 ;
Key Personnel	means collectively the Contractor Project Manager and any workman of the Contractor (whether or not an employee of the Contractor) named in Annex 1 of this Schedule 3 or as so designated in any other document of this Contract;
Maintenance Services	means the carrying out of any and all operations and procedures necessary to maintain the performance of the Software in accordance with the standards set out in the Requirement Specifications and shall include, without limitation:- (i) Standard Services; (ii) Preventive Maintenance; and (iii) Emergency Maintenance;
Operating Hours	means the normal operating hours of the Software which will be 24 hours daily, including Sundays and public holidays;
Preventive Maintenance	means maintenance which includes, but is not limited to: (i) necessary adjustments and minor repairs; and (ii) installation, testing and the implementation of upgrades;
Preventive Maintenance Schedule	means the schedule showing the frequency that preventive maintenance should be carried out on the Software, as determined by the Company and as specified in Annex 4 of this Schedule 3 ;
Standard Services	means the services to be supplied by the Contractor to the Company as set out in Annex 2 of this Schedule 3 ;
Statement of Work	means a specific agreed statement of requirements, tasks and deliverable products and services;
Successful Commissioning	is as defined in Clause 8.4 of this Schedule 3 ;
Transition In Plan	is as defined in Clause 9.2 of this Schedule 3 ;
Transition Milestones	is as defined in Clause 9.1.3 of this Schedule 3 ;
Transition Services	means those services and processes more particularly described in the Requirement Specifications which are

necessary or desirable to accomplish any transfer, migration or preparation in order to enable the Company to use the Software and/or to upload data into the Software with minimal disruption of the Company's operations and capabilities or without causing an adverse effect on or degradation of the quality or continuity of any service or system which the Company is currently using;

Warranty Period shall have the meaning ascribed to it in Clause 19 of the General Terms and Conditions;

- 1.2 Capitalised expressions used without definition in this [Schedule 3](#) shall have the meanings assigned to them in the General Terms and Conditions or any of the other Schedules to the General Terms and Conditions. Other technical expressions relating to computers systems, software and hardware shall have the meanings commonly attributed to them in the information technology and information services businesses.
- 1.3 All references herein to clauses, unless otherwise expressly stated, are references to clauses numbered in this [Schedule 3](#) and not to those in any other document forming part of this Contract. Where a clause number is quoted, then reference is being made to that clause bearing that clause number and to all the sub-clauses if any, under that same clause number (e.g. a reference to Clause 3 refers to Clause 3.1 to 3.2 inclusive of all their respective sub-clauses if any).
- 1.4 Where the provision number is stated without a description of any document then it refers to the provision so numbered in the document where the reference appears.

PART 1 – IMPLEMENTATION

2 SCOPE OF SERVICES AND SUPPLY

- 2.1 The Contractor shall upon the terms and conditions of this Contract:
 - 2.1.1 act as consultant to the Company in relation to this Contract;
 - 2.1.2 design and develop in consultation with the Company, the necessary interfaces and the integration of the Software with the Company's existing equipment;
 - 2.1.3 provide the Software fully integrated, tested and accepted by the Company by the cutover date as specified in the Delivery Schedule;
 - 2.1.4 provide the Documentation and training; and
 - 2.1.5 provide such other services as the Contractor may be required to provide under this Contract and/or the Requirement Specifications.
- 2.2 The cost of providing the services described in Part 1 of this Schedule shall be included in the Contract Price and no additional payment shall be due to the Contractor for the provision of such services.

3 IMPLEMENTATION SERVICES

- 3.1 The Contractor will provide the Company with implementation services ("**Implementation Services**") including without limitation (i) design and development of the interfaces, (ii) integrating the Software with the Company's existing equipment and systems, (iii) study, design, manage and control any system and process harmonisation efforts, business process re-engineering efforts and change management efforts, (iv) perform such other duties as may be necessary or desirable in order for the Contractor to fulfil its obligations under this Contract; and (v) perform such other services as may be required or described in the Requirement Specifications.
- 3.2 While the Contractor's method of work is its own, the Contractor shall comply with the reasonable instructions of the Company and shall use its best efforts to promote the interests of the Company in relation to this Contract.

- 3.3 Save for the duties to be performed specifically by the Company as listed in the Statement of Work, the Company may, in connection with the implementation of the Software and in their absolute discretion, provide the Contractor with such other assistance, information or resources including but not limited to seconding its staff and/or causing its Affiliates to second its staff, to the Contractor in order to enable the Contractor to implement the Software. The Contractor shall accept such assistance, information or resource when offered by the Company. For the avoidance of doubt, such assistance, information or resources from the Company do not in any way relieve or lessen the obligations to be undertaken by the Contractor under this Contract.

4 EXECUTIVE COMMITTEE

- 4.1 The Parties agree to constitute a committee with TWO (2) representatives from each Party to this Contract ("**Executive Committee**") for the purposes of making project management and human resource decisions. The Executive Committee may appoint additional persons to assist the Executive Committee in its duties but such persons shall not have the power to vote in any deliberations of the Executive Committee.
- 4.2 The chairperson of the Executive Committee shall be appointed by the Company. In a situation of deadlock, the Executive Committee shall refer the matter to the chief executive officers (or equivalent officer) of both Parties for resolution. The other powers and duties of the Executive Committee shall be governed by the regulations to be agreed upon by the Parties.
- 4.3 Where any regulations made under this Clause by the Executive Committee conflict with the provisions of this Contract, the provisions of this Contract shall prevail.

5 PROJECT MANAGEMENT

- 5.1 The Contractor shall appoint a Contractor Project Manager who shall be primarily responsible for directing and coordinating the implementation of the Software and all work and services which are to be performed or provided by the Contractor under this Contract. The Company shall appoint a Company Project Manager who shall be primarily responsible for the co-ordination of all matters relating to the Company's obligations under this Contract. Unless otherwise agreed, all communications, documentation and materials relating to this Contract shall be sent as appropriate by the Company to the Contractor Project Manager or from the Contractor to the Company Project Manager.
- 5.2 The Contractor Project Manager and the Company Project Manager shall meet at least once every month during the first week of that month to review the Contractor's performance during the previous month, make plans for the coming month and to discuss any other matters pertaining to the implementation of the Software. All meetings shall be held at a location selected by the Company.
- 5.3 It is the intention of the Parties to endeavour to settle amicably all disagreements and differences of opinion on matters of procedure and management arising out of this Contract by conference and negotiations. In the event of any dispute, disagreement or difference of opinion, the matter shall be disposed of as follows:
- 5.3.1 the Contractor Project Manager and the Company Project Manager shall meet to attempt resolution. Should they not meet within SEVEN (7) days of the date on which either Party convenes a meeting to resolve the matter or should they not be able to resolve the matter within SEVEN (7) days of meeting, then
- 5.3.2 the Executive Committee shall meet to attempt resolution. Should the Executive Committee not meet within SEVEN (7) days of the date on which either Party convenes a meeting to resolve the matter or should the Executive Committee not be able to resolve the matter within SEVEN (7) days of meeting, then

- 5.3.3 the matter shall promptly be referred jointly to the chief executive officers (or equivalent officer) of both Parties. Should a unanimous decision not be reached within FOURTEEN (14) days of the matter being so referred, then
- 5.3.4 the matter shall be dealt with as set out in Clause 35 of the General Terms and Conditions.
- 5.4 All actions of the Company Project Manager shall be binding on the Company. All actions of the Contractor Project Manager shall be binding on the Contractor.
- 5.5 The Company reserves the right to request, on reasonable grounds, the replacement of any person involved in this Contract and the Contractor shall so accede to such request.
- 5.6 The Contractor agrees to make available the Key Personnel to perform the duties of the Contractor in relation to this Contract. The Contractor agrees that it shall not change its Key Personnel without the prior written approval of the Company (such approval not to be unreasonably withheld) and any replacement shall have undergone, prior to assuming his duties, a suitable period of familiarisation with his or her predecessor so far as reasonably practicable. If the Company objects to the change of any Key Personnel, the Contractor may escalate this matter to the Executive Committee for determination. In the event that any Key Personnel is on leave or is temporarily absent from work for whatever reasons, the Contractor shall immediately designate another of its employee of at least equal competence and familiarity with the Software to perform all the duties and functions of the Key Personnel during his absence.
- 5.7 The Contractor Project Manager or his replacement shall be contactable by the Company Project Manager during the Company normal business hours ("**Business Hours**"). For the purposes of allowing the Company Project Manager to contact the Contractor Project Manager outside of the Business Hours or during any emergency which might require the Contractor Project Manager's attention, the Contractor shall provide the Company with a telephone number to facilitate such contact.
- 5.8 The Company may nominate its staff or staff of the Affiliates ("**Company Personnel**") to participate in the implementation of the Software to a sufficient extent such that an in-depth understanding of the Software is obtained. The Company agree to bear all costs of the participation of the Company's Personnel. The Contractor acknowledges that the participation of the Company's Personnel shall not in any way release or relieve the Contractor of its due performance of its obligations under this Contract, or of the warranties that the Contractor has given in connection with the Software and/or Services, or require the Company to pay the Contractor to enable the Company's Personnel to so participate in the implementation of the Software.

6 IMPLEMENTATION PLAN

- 6.1 The Contractor shall produce and maintain an Implementation Plan, conforming to the Delivery Schedule, that accurately reflects the time schedule and sequence of events necessary for the completion of the implementation of the Software.
- 6.2 The Implementation Plan shall be updated weekly showing the expected and actual events and completion dates. The Implementation Plan shall be made available to the Company Project Manager for review after each update.
- 6.3 The Contractor shall deliver to the Company Project Manager written weekly and monthly progress and status reports in the format specified in the Requirement Specifications, or otherwise prescribed by the Company. The acceptance of these reports by the Company shall not constitute any waiver of its rights or variation of this Contract and shall not in any way prejudice any rights or remedies of the Company under this Contract.
- 6.4 The Contractor shall notify the Company Project Manager of any expected delay in any activity undertaken by the Contractor pursuant to this Contract. The Contractor shall refer

immediately to the Company Project Manager any matter likely to impede the progress of the supply, delivery, installation and implementation of the Software.

7 CHANGE CONTROL AND EXTENSIONS

7.1 If any Party in the course of this Contract finds that there is a need to change the Requirement Specifications or any other aspect of the Software, then:

7.1.1 the Party requesting the change shall submit a written change request to the other Party which shall include the project/task identification, name and title of the officer requesting the change, the date of the request, a description of the proposed change and the reasons for the proposed change ("**Change Request**");

7.1.2 the Party requesting the change shall categorise the Change Request as Priority 1 (urgent), Priority 2 (ordinary) or Priority 3 (post acceptance);

7.1.3 if the Contractor is requesting the change, the Change Request shall also be accompanied by a statement by the Contractor detailing the impact on the Implementation Plan, Software, Delivery Schedule and other relevant obligations under this Contract resulting from the proposed change;

7.1.4 if the Company is requesting the change, the Contractor shall within THREE (3) working days of receiving the Change Request advise the Company if the changes can be made and, subject to Clause 7.2 of this [Schedule 3](#), the impact on the Contract Price, Implementation Plan, Software, Delivery Schedule and other relevant obligations under this Contract; alternatively, the Contractor shall within THREE (3) working days of receiving the Change Request advise the Company that a study into the impact of the change proposed is required ("**Impact Study**"), accompanied by a statement detailing the estimated time, resources required by and costs of the Impact Study; and

7.1.5 within FOURTEEN (14) days of receiving the Contractor's Change Request, the Contractor's response to a Change Request or the results of the Contractor's Impact Study, as the case may be, the Company shall make known their decision whether or not to proceed with the changes.

7.2 There shall not be any increase in the Contract Price if the Change Request:

7.2.1 merely results in the refinement of the Requirement Specifications;

7.2.2 does not result in any major changes to the detailed design of the Software; or

7.2.3 is made by the Contractor.

7.3 Pending written agreement to implement the changes, the Parties shall proceed only in accordance with the then current terms and conditions of this Contract.

7.4 The Parties agree to set out periods (prior to each scheduled delivery of the deliverables) in the Implementation Plan during which actions on Change Requests concerning the Requirement Specifications will be suspended. Any such Change Request will be dealt with after the Company's acceptance of the scheduled delivery.

7.5 Any Change Request or change in the Requirement Specifications or any other aspect of the Software must be endorsed and agreed to in writing by the Company Project Manager.

7.6 Where the Contractor requires the Company's input or the Company to perform their obligations in order that the Contractor may perform its obligations, the Contractor shall:

7.6.1 advise the Company as to the input which the Contractor requires or the obligation which the Contractor requires the Company to fulfil; and

7.6.2 indicate to the Company when the Contractor expects the Company to so respond to the Contractor's request, provided always that the Contractor allows the Company a reasonable period during which to respond to the Contractor's request.

Provided that the above have been complied with, if there is a delay beyond a reasonable period for reasons solely attributable to the Company, the Company Project Manager shall

upon the application by the Contractor, grant reasonable extensions of time and the Delivery Schedule and payment schedule shall be amended or adjusted accordingly.

8 ACCEPTANCE AND COMMISSIONING

- 8.1 Interim acceptance and review of the deliverables shall be carried out by the Parties throughout the implementation process of the Software in the following manner to ensure that Software has been implemented and performs in accordance with the Requirement Specifications:
- 8.1.1 within THIRTY (30) days after each delivery, the Parties shall test and review the delivery and the Contractor shall provide the Company with the test results in writing;
 - 8.1.2 the Company shall identify in reasonable detail all defects in the deliverables;
 - 8.1.3 the Contractor shall correct all defects reported under Clause 8.1.2 of this [Schedule 3](#) on or before the next scheduled delivery (regardless of the nature of the deliverable), failing which the Company shall be entitled to withhold payment for the defective delivery and/or any subsequent deliveries until such defects are corrected.
- 8.2 The Contractor and the Company shall work diligently to achieve early acceptance of the deliverables. Where a component of the Software provides sufficient functionality and quality such that it permits testing by trained users, such component shall be made available to the Company for testing.
- 8.3 The Parties shall comply with the Acceptance Test Procedures and Acceptance Criteria contained in the Requirement Specifications, as well as the following:
- 8.3.1 upon written notice by the Contractor that the Software or part thereof is completed and ready for acceptance tests, the Company shall indicate the date to commence the acceptance tests which shall be within FOURTEEN (14) days of the written notice. The acceptance tests of the Software or part thereof shall be conducted at the relevant Site and shall include user acceptance tests, stress and performance tests and other tests specified by the Company in accordance with the Acceptance Test Procedures to determine if the Software or that part thereof meets the Acceptance Criteria. The Contractor shall attend at the acceptance tests and shall provide the Company with the tools, the testing equipment and all necessary facilities and assistance in conducting the acceptance tests;
 - 8.3.2 after the successful completion of the acceptance tests of the Software or part thereof and if the Acceptance Criteria have been met, the Company shall issue the Certificate of Acceptance to the Contractor accepting the Software and/or such part thereof. For avoidance of doubt, where work under the Contract is carried out in several phases, the Company shall provide a separate Certificate of Acceptance for each phase, and the Certificate of Acceptance for the final phase shall be deemed to be the final Certificate of Acceptance for the entire Software;
 - 8.3.3 the Acceptance Criteria shall include: (a) delivery of TWO (2) copies of any printed documents, magnetic and other storage media containing the Documentation to the Company in the manner and format as prescribed by the Company; and (b) written acceptance of the Documentation by the Company;
 - 8.3.4 without prejudice to the foregoing, if the Company does not issue the Certificate of Acceptance within THIRTY (30) days of completion of the acceptance tests for the Software or part thereof and fails to identify in reasonable detail any non-conformity with the Acceptance Criteria or any deviation from the Requirement Specifications, then the Software or such part thereof shall be deemed to have been accepted by the Company; and
 - 8.3.5 in the event the Software or that part thereof is not accepted in accordance with the foregoing, repeat tests shall be carried out within a reasonable time thereafter but in any event no later than FOURTEEN (14) days after the previous test. The Contractor shall not be entitled to additional charges for work done in relation to such repeat tests nor shall the Contractor be so compensated. If TWO (2) subsequent tests demonstrate that the Software or that part thereof is not in

accordance with the Acceptance Criteria, the Company may by written notice to the Contractor elect to:

- 8.3.5.1 require the Contractor to promptly supply, without extra charge, such additional or replacement components of the Software or parts thereof or Services as may be necessary to enable the Software or that part thereof to meet the Acceptance Criteria;
- 8.3.5.2 accept and retain such part of the Software as the Company may consider expedient at such reduced price as may be agreed between the Company and the Contractor; or
- 8.3.5.3 reject the Software or that part of the Software whereupon (i) the Contractor shall be liable to the Company for the costs of any replacement software or that part of the Software with the same or comparable functionalities as the Software or such parts as aforesaid which the Company may acquire, and (ii) the Contractor shall be liable to the Company for any incidental administrative cost and any other damages arising from delays occasioned by the replacement.

8.4 Upon the issue of the final Certificate of Acceptance, the Contractor shall for a period of at least [**THREE (3) months**] (“**Commissioning Period**”) monitor and ensure that the Software performs in accordance with the Requirement Specifications in its production environment with “live” data. Successful commissioning is deemed to occur if the Software performs in accordance with the Requirement Specifications for [**THIRTY (30)**] consecutive days (“**Successful Commissioning**”). The Commissioning Period shall be no less than [**THREE (3) months**] notwithstanding Successful Commissioning within the said period. In the event that the Software fails to perform in accordance with the Requirement Specifications at any time during the last month of the Commissioning Period, the Commissioning Period shall be automatically extended until Successful Commissioning is achieved or again achieved as the case may be, whereupon the Commissioning Period shall expire, provided the Commissioning Period shall not in any event exceed a total of [**TWELVE (12) months**] from the date of issue of the final Certificate of Acceptance. The date of expiry of the Commissioning Period shall be known herein as the “**Commissioning Date**”. If any payment to the Contractor is associated with the Commissioning Date, the date of payment shall be adjusted in accordingly. For avoidance of doubt, where work under the Contract is carried out in several phases, there shall be a separate Commissioning Period and Commissioning Date for each phase, and the Commissioning Date for the final phase shall be deemed to be the Commissioning Date for the entire Software.

8.5 Without prejudice to Clause 8.4 of this [Schedule 3](#), during the Commissioning Period, the Contractor shall:

- 8.5.1 provide the Company with Maintenance Services at no additional cost to the Company;
- 8.5.2 comply with the Service Level Standards for the entire duration of the Commissioning Period;
- 8.5.3 be entirely responsible for the functioning of the Software in accordance with the Requirement Specifications; and
- 8.5.4 comply with any additional requirements as may have been mutually agreed upon between the Company and the Contractor at no additional cost to the Company.

8.6 If the requirements set out in Clause 8.4 above of this [Schedule 3](#) are not achieved within [**TWELVE (12) months**] from the date of issue of the final Certificate of Acceptance, the Company may, without prejudice to any other rights that it may have against the Contractor, by written notice elect to:-

- 8.6.1 require the Contractor to promptly supply, without charge, such additional or replacement components of the Software or parts thereof or Services as may be necessary to enable the Software to meet the Requirement Specifications; or

- 8.6.2 accept and retain such part of the Software as the Company may consider expedient at such reduced price as may be agreed between the Company and the Contractor; or
- 8.6.3 reject the Software whereupon (i) the Contractor shall be liable to the Company for the costs of any replacement Software with the same or comparable functionalities which the Company may acquire (ii) the Contractor shall be liable to the Company for any incidental administrative cost and any other damages arising from delays occasioned by the replacement; or
- 8.6.4 notwithstanding Clause 25 of the General Terms and Conditions or Clause 16 of this [Schedule 3](#), terminate this Contract forthwith upon written notice, with Clause 25.4 of the General Terms and Conditions to apply.

9 TRANSITION IN

- 9.1 The Contractor shall, within TWO (2) weeks of the execution of this Contract, present to the Company for the Company's approval, a transition plan detailing among other things at the least the following:
 - 9.1.1 a description of the services, data equipment and software being migrated, as applicable;
 - 9.1.2 the Contractor's deliverables in relation to the Transition Services and acceptance criteria in respect thereof;
 - 9.1.3 a timeline which states the dates on or by which the Contractor shall have completed certain tasks or set of tasks which have been defined as or are part of Transition Services ("**Transition Milestones**");
 - 9.1.4 the methodology or approach to be employed in the performance Transition Services and the resources to be provided by the Contractor;
 - 9.1.5 any other information required under the Requirement Specifications; and
 - 9.1.6 such other information and planning as are necessary to provide that the Transition Services take place in accordance with the Transition Milestones and with, in the opinion of the Company, minimal unscheduled disruption to the Company's or its Affiliates' operations and capabilities.
- 9.2 If the Company does not approve of the transition plan submitted as aforesaid, the Contractor shall, within ONE (1) week, make such changes to the plan as may be directed by the Company and once such changes have been incorporated by the Contractor, the transition plan shall be deemed approved ("**Transition In Plan**").
- 9.3 Whilst performing the transition, the Contractor shall comply with the Transition In Plan and ensure that it has adequate resources dedicated to complying with the Transition In Plan.
- 9.4 The Contractor shall, as a part of the Transition Services, conduct the acceptance tests outlined in the Transition In Plan and such other tests as the Company may reasonably request to verify the successful completion of the Transition Services and the migration of the Company's information technology requirements to the Contractor without degradation in quality of service, reliability or integrity of systems and Data.
- 9.5 Deliverables specified in the Transition In Plan will be tested and accepted or rejected by the Company and corrected and redelivered by the Contractor in accordance with criteria and procedures described in the Transition In Plan approved by the Company. Without prejudice to the foregoing, in the event that the Contractor performs Data migration or other services related to the uploading of the Company's Data into the Software for the Company, then in the event of discrepancies in the Data before and after migration to the Software or where the Data after migration cannot wholly or partly be used by the Software or where the Data when in use returns erroneous results, and provided such discrepancies are due to the default of the Contractor, the Contractor shall:
 - 9.5.1 correct the discrepancies within FOURTEEN (14) days or as mutually agreed from the time the foregoing is ascertained; and

- 9.5.2 if the Contractor fails to correct such discrepancies in accordance with Clause 9.5.1 above [Schedule 3](#), the Company may nominate such other service provider to correct the discrepancies and the Contractor shall within SEVEN (7) days of such nomination, engage such service provider as its sub-contractor at the Contractor's expense. The timeline for appointing such sub-contractor shall be deemed to be a Milestone for the purposes of Clause 6.6 of the General Terms and Conditions.

PART 2 – MAINTENANCE AND SUPPORT

10 DURATION

- 10.1 During the Warranty Period, the Contractor shall provide Maintenance Services to the Company at no cost to the Company. [The Company shall have the option to engage the Contractor to] OR [The Contractor shall] provide Maintenance Services commencing from the expiry of the Warranty Period and for an initial term of [] years on the terms of this Contract, with further options for the Company to require the Contractor to continue providing Maintenance Services for subsequent terms of [] year at a time, provided that in addition to any other right that the Company may have to terminate this Contract, the Company may at any time give the Contractor SIXTY (60) days' written notice to terminate the provision of Maintenance Services (without the need to assign any reason).

11 CHARGES FOR MAINTENANCE AND SUPPORT

- 11.1 In consideration of the due performance of Maintenance Services by the Contractor, the Company shall, upon the expiry of the Warranty Period, commence payment of the Annual Service Charge to the Contractor. The Annual Service Charge may not be increased during the term of this Contract.
- 11.2 The Contractor shall invoice the Company the Annual Service Charges in [one] OR [four] OR [twelve] equal instalments in arrears (corresponding to [yearly] OR [quarterly] OR [monthly] payments in arrears) and the Company shall pay the undisputed amounts due within SIXTY (60) days of receipt of each invoice.

12 CONTRACTOR'S RESPONSIBILITIES AND SERVICE LEVELS

- 12.1 The Contractor shall maintain a log of all its activities in its provision of Maintenance Services. The log will track the following events listed below, which list of events shall not be deemed to exhaustive:
- 12.1.1 date and time the Contractor is notified of any malfunction;
 - 12.1.2 date and time when Contractor commenced rectification of the malfunction or error;
 - 12.1.3 part of the Software subject to investigation;
 - 12.1.4 total time the Software or part thereof is made unavailable to the Company;
 - 12.1.5 description of malfunction(s), including cause(s);
 - 12.1.6 corrective action taken, including temporary corrections, and workarounds;
 - 12.1.7 preventive action to be taken; and
 - 12.1.8 tests performed and results.
- 12.2 Following every visit to any Site by the Contractor's personnel, the Contractor shall at its own expense within a reasonable period of time, clear away and remove from the Site all surplus materials, rubbish and work of every kind and leave the whole of the Site clean and in workmanlike condition.
- 12.3 The Contractor shall continue with its efforts to correct or rectify any defect or malfunction in the Software reported to it until such time as the defect or malfunction is corrected or restored such as to enable the Software to operate in the manner contemplated in the Requirement Specifications, unless the Contractor is able to satisfy the Company that the malfunction is due to a factor for which the Company is responsible.

- 12.4 Any software, hardware or equipment of any kind used by the Contractor to carry out its obligations shall be deemed to be included in the charges payable for Maintenance Services.
- 12.5 If at any time on or after the Commissioning Date the Software does not perform at or above the Service Level Standards or if the Contractor does not provide the Services in accordance with the Service Level Standards, the Contractor acknowledges that the Company will be deprived of the benefits of this Contract. As such, the Contractor shall reduce the fees charged to the Company by providing the Company with service credits in the manner and quantum stipulated in [Schedule 4](#). If due and not paid, the Company shall be entitled to recover such payments from the Contractor as a debt due and owing to the Company, deduct the service credit from any monies which might be due from the Company to the Contractor or deduct the service credit from the Security Deposit (if available).
- 12.6 Where there any concurrent failures to meet the Service Level Standards, each failure will be dealt with individually and service credits shall be payable for each of such failures.
- 12.7 The Company's levy of or receipt of service credits shall be without prejudice to and shall be in addition to any right or remedy that the Company may have against the Contractor whether under this Contract or otherwise. The Parties agree that service credits are not damages, whether liquidated or otherwise, paid or to be paid by the Contractor.
- 12.8 Where the Contractor does not achieve the Service Level Standards on a repeated, frequent or regular basis, the Company shall have the right to terminate this Contract and avail itself to the available remedies.
- 12.9 The Contractor's compliance with the Service Level Standards shall be constantly monitored through various means including but not limited to regular reporting by the Contractor, benchmarking exercises, monitoring by the Company, meetings and site inspections. Where required by the Company, the Contractor shall:
- 12.9.1 provide the Company with such systems, facilities and resources (including without limitation access to the Contractor's staff); and/or
 - 12.9.2 supply the Company with all requisite data, information and assistance,
- so as to enable the Company to determine if the Contractor has complied with the Service Level Standards. For the avoidance of doubt, the Company's evaluation and/or determination in relation to Contractor's compliance or otherwise with any Service Level Standards shall be final and conclusive.
- 12.10 The Company shall from time to time review the desirability to impose or introduce Service Level Standards (where no such Service Level Standards have been specified) or to modify the Service Level Standards to reflect higher levels of performance (where Service Level Standards are in place). Such review, if conducted, shall be no more frequent than once every FOUR (4) months during the pendency of this Contract. Any variations or modifications to be made to the Service Level Standards shall be carried out via a Change Request save that in relation to such variations or modifications to the Service Level Standards, there shall be no variation to the Contract Price and/or the Annual Service Charge.

13 MANAGEMENT AND PERSONNEL

- 13.1 The Contractor shall appoint a Client Executive who shall be responsible for the co-ordination of all matters relating to the Maintenance Services. All communications, documentation and materials relating to the provision of Maintenance Services shall be sent as appropriate by the Company to the Client Executive or the Client Executive to the Company. The Client Executive shall not be replaced without the prior written approval of the Company (such approval not to be unreasonably withheld) and any replacement shall have undergone, prior to assuming his or her duties in connection with the Maintenance

Services, a suitable period of familiarisation with the Maintenance Services with his predecessor so far as reasonably practicable. The Company reserves the right to request, on reasonable grounds, the replacement of any person involved in the Maintenance Services and the Contractor shall so accede to such request.

14 WARRANTY AND DEFAULT

14.1 In relation to the provision of Maintenance Services, the Contractor further represents and warrants as follows:

14.1.1 that all its personnel and those of its subcontractors or agents are suitably qualified and competent to perform the Maintenance Services;

14.1.2 that it shall carry out its obligations in conformity with any standards as stipulated in the Requirement Specifications, and where the Requirement Specifications do not specify any particular standard, in conformity with the general accepted standards of skill, care and diligence appropriate to the nature of the services rendered;

14.1.3 that the Contractor observe and comply with, and to procure that its employees, agents and subcontractors observe and comply with, all statutory and other relevant rules and regulations relating to health, safety and security, including provisions of the Personal Data Protection Act 2012 (No. 26 of 2012), applicable at the premises of the Company and its Affiliates;

14.1.4 at the date of commencement of the provision of Maintenance Services the Contractor has obtained and will maintain for the duration of the provision of such services, all permits, licences and consents necessary for the Contractor to perform the Maintenance Services;

14.1.5 that any equipment or material provided by the Contractor whether before or during the provision of the Maintenance Services, including debugging software, firmware or hardware, shall not interfere with the normal operation of the Software during its Operating Hours; and

14.1.6 that in the event it fails to conform to the terms of this Contract and in particular the warranties given under this Clause, it shall, without request, take immediate action to remedy the same without any cost to the Company.

14.2 Where the Contractor fails or refuses to carry out its obligations under this Contract and, in particular, the warranties set out above, the Company may itself employ and pay another party to undertake the performance thereof and may charge the Contractor for any expense, cost, damage or loss which the Company sustained on account of the Contractor's default. The Contractor shall not be relieved of its obligations herein by the failure of the Company to make any inspection or discover any defective work or any aspect of the Contractor's default.

PART 3 – GENERAL

15 MODIFICATIONS

15.1 Any modification or enhancement of the Software and any testing, diagnostic, debugging or monitoring software, scripts or functionalities once incorporated into the Software shall be deemed to be part of the Software for all purposes under this Contract.

16 TERMINATION

16.1 Without prejudice to the Company's right to terminate this Contract, as provided elsewhere in this Contract, the Company may forthwith on giving notice in writing to the Contractor terminate the provision of Maintenance Services if the Software or any substantial part thereof is lost, deleted, incapacitated or damaged beyond economic repair.

16.2 On the termination of the provision of Maintenance Services for whatever reason, any monies or fees paid in advance by the Company for such services shall, without affecting

any other rights or remedies available to the Company, be pro-rated and refunded to the Company.

- 16.3 Any expiration or termination of the provision of Maintenance Services, however occasioned, shall not affect the accrued rights or liabilities of either Party nor shall any remedy which any Party have against the other for breach of the terms herein be affected. Further, each Party shall at its own expense immediately return to the other or, as the other may instruct, dispose of, all copies of all documents, papers, specifications and other materials belonging to the other Party being in the first Party's possession or under its control, including any such materials which incorporate Personal Data, and not intended under the terms of this Contract to remain in the possession or under the control of the first Party, and shall certify in writing to the other Party that the same has been done.
- 16.4 Any cessation of the provision of Maintenance Services (for whatsoever reason) shall not terminate or affect the right of the Licensees to continue their use of the then current version of the Software in whatever manner permitted immediately prior to cessation of the provision of Maintenance Services.

17 ANNEXES

- 17.1 This Schedule is supplemented by the following Annexes which shall be incorporated into and be deemed part of this Schedule subject to the necessary amendments to give effect to the Parties' intention as expressed herein:
- Annex 1 – Key Personnel
 - Annex 2 – Standard Services
 - Annex 3 – Service Charges
- 17.2 In the event of conflict between the contents of the Annexes and this Schedule, the provisions of this Schedule shall prevail.

ANNEX 1 TO SCHEDULE 3

KEY PERSONNEL

<To Be Inserted>

ANNEX 2 TO SCHEDULE 3

STANDARD SERVICES

For the purposes of this Annex 2,

1. In respect of the Software, “**Standard Services**” shall mean the obligations of the Contractor as stated below:
 - (i) investigation and correction of defects in the Software as reported by the Company including temporary corrections and workarounds of the defects until such time as standard corrections and/or updates of the Software are available;
 - (ii) installation, testing and the implementation of standard corrections, updates, releases and upgrades and updating of related documentation and materials;
 - (iii) rendering advice on the performance tuning and security configuration of all items of the Software;
 - (iv) recovering lost Data, restoration and repair of damaged Data and the correction of erroneous Data to the extent possible;
 - (v) rendering advice and guidance to the Company in the use of the Software;
 - (vi) at the request of the Company to provide training for the personnel of the Company in the use of the Software;
 - (vii) informing the Company of all future updates and upgrades of the Software or components thereof (including components which are third party commercial off-the-shelf software products) within ONE (1) week of their release for general distribution and, when so requested by the Company, supplying and installing the relevant updates and upgrades within FOUR (4) weeks of receipt of the Company's request, but should the Company decide not to update or upgrade any Software, the Contractor shall continue to provide maintenance and support for the Software or components thereof up to TWO (2) versions prior to the latest version of the Software which has been released for general distribution; and
 - (viii) assisting in the transfer of knowledge to the Company Level 1 Service Desk as may be required from time to time.
2. In the provision of the Standard Services, the Contractor shall ensure that the performance standards more particularly described in the Requirement Specifications are complied with and shall, if requested by the Company, provide its personnel with appropriate equipment which the Company may require to ensure that the standards are always complied with.
3. The Contractor shall establish and maintain during the pendency of this [Schedule 3](#), a toll-free telephone number and an electronic communications connection (“**Contractor Help Desk**”) for use by the Company. Any temporary or permanent change to such Contractor Help Desk details shall be notified to the Company immediately. The Contractor Help Desk shall function and be accessible to the Company at all times and be adequately manned by trained engineers who are familiar with the Software.
4. Forthwith upon such remedies being completed the Contractor shall deliver to the Company the corrected version of the object code of the Software in machine-readable form together with appropriate amendments to the documentation, if any, specifying the nature of the correction and providing instructions for the proper use of the corrected version of the Software.

ANNEX 3 TO SCHEDULE 3

SERVICE CHARGES

<insert in this schedule the annual maintenance charges, when payable and mode of payment. If maintenance charges have already been catered for in the Schedule 2, then there is no need for this Annex 3 and the definition of Annual Service Charge in Schedule 3 shall be amended accordingly>

SCHEDULE 4
SERVICE LEVEL STANDARDS

<To Be Inserted>

SCHEDULE 5
ASSUMPTIONS

<To Be Inserted>

SCHEDULE 6
REQUIREMENT SPECIFICATIONS

<To Be Inserted>