

PART 1 - SECTION D

CONDITIONS OF SOFTWARE MAINTENANCE AND SUPPORT

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1. DEFINITIONS

1.1 These Conditions of Software Maintenance and Support (the "**Maintenance Contract**") govern the maintenance of the Hardware and Software maintenance and support upon the Government's exercise of the Option pursuant to Clause 28 of **Part 1 Section C Conditions of Contract for Final Award**.

1.1.1 The Supplier agrees to perform and be bound by the following terms and conditions in **Part 1 Section C Conditions of Contract for Final Award**, as if all such terms and conditions applied to and are incorporated by reference *mutatis mutandis*, as if set forth at length in this Maintenance Contract:

Clause 14 – Supplier's Personnel

Clause 33 – Documentation

Clause 34 – Liability of Supplier

Clause 36 – Relocation of Solution

Clause 37 – Language

Clause 40 – Insurance

Clause 42 – Compliance with Statutes, Regulations, Etc.

Clause 43 – Sub-Contract, Assignment, Transfer

Clause 45 – Public Release of Information

Clause 46 – Gifts, Inducement and Rewards

Clause 48 – Variation of Contract

Clause 49 – Breaches Not To Be Waived

Clause 51 – Data Security and Protection

Clause 52 – Policy and Audit

Clause 56 – Correspondence

Clause 57 – Cumulative Remedies

Clause 58 – Claims for Extra Work

Clause 62 – Consortium

Clause 65 – Set off

1.1.2 Any reference to:

(a) "Contract" in any terms and conditions incorporated under Clause 1.1.1 shall be read as referring to "**Maintenance Contract**".

(b) "Contract Price" in any terms and conditions incorporated under Clause 1.1.1 shall be read as referring to "**price of the Maintenance Contract.**"

1.1.3 In the event of any conflict or inconsistency between any terms or conditions incorporated under Clause 1.1.1 and the terms and conditions of this Maintenance Contract, the terms and conditions of this Maintenance Contract shall prevail.

1.2 Unless otherwise defined herein or the context otherwise requires, the terms used herein have the same meanings ascribed to them in **Part 1 Section C Conditions of Contract for Final Award** and:

"**Solution Downtime**" means the period of time during the Operating Hours of the Solution where the Solution is not operating in accordance with the OBP Specifications except for occasions where the failure is due to factors for which the Government is responsible and shall not include the downtime after the Operating Hours.

"**Operating Hours**" means the scheduled operating hours of the Solution which will be from continuously for twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance.

"**Support Hours**" means hours from 8.00 am to 6.00pm from Mondays to Fridays with Saturdays, Sundays and Public Holidays excepted.

"**Solution**" means the items of Hardware and Software listed in the **1st schedule**.

2. SERVICES TO BE PERFORMED

2.1 The Supplier shall provide:

- (a) software maintenance and support for the Software and any other application development software or tools listed in the 1st Schedule; and
- (b) hardware maintenance for all the items of Hardware and any other hardware peripherals listed in the 1st Schedule.

3. SOFTWARE MAINTENANCE AND SUPPORT

3.1 Software maintenance and support for the Solution shall include the following:

- (a) investigation and correction of defects in the Software as reported by the Government including temporary corrections and bypass of the defects until such time as standard corrections and/or updates of the Software are available ("**Remedial Support**");
- (b) installation, testing and the implementation of standard corrections, updates, supply and installation of new versions and new releases of the Software and updating of related documentation and materials;
- (c) rendering advice on the performance tuning of all items of Software;
- (d) recovering lost data, restoration and repair of damaged data and the correction of erroneous data to the extent possible;
- (e) restoring the Solution to an operable state where Solution Downtime is attributable to Software defect or error;
- (f) rendering advice and guidance to the Government in the use of the Solution;

- (g) at the request of the Government to provide training for the personnel of the Government in the use of the Solution;
- (h) informing the Government of all future updates and new releases of the Software within one (1) calendar week of their release for general distribution and, when so requested by the Government, supplying and installing the relevant update and releases within four (4) calendar weeks of receipt of the Government's request; and
- (i) providing other software support services including technical advice and assistance as may be required by the Government from time to time.

3.2 Remedial Support

- 3.2.1 Remedial Support shall be provided during Support Hours.
- 3.2.2 On receipt of information from the Government of a defect or an error in the Solution, the Supplier shall immediately dispatch its personnel to the Site to arrive at the Site within two (2) hours of the time the information from the Government was received.
- 3.2.3 Time shall be of the essence in responding to calls for Remedial Support. The Supplier shall take all measures necessary to ensure that the response time stated in Clause 3.2.2 of this Maintenance Contract is complied with and shall, if requested by the Government, provide its personnel with pagers or any other equipment which the Government may require to ensure that the response time is always complied with.
- 3.2.4 The Supplier shall inform the Government of the contact persons and contact telephone numbers of its personnel to whom requests for Remedial Support shall be made. Any report of a defect in the Solution to any person nominated by the Supplier by name or to a person answering to a telephone number supplied by the Supplier pursuant to this Clause shall be deemed to be a request for Remedial Support contemplated by this Clause.
- 3.2.5 Where the Supplier is not able to remedy the defect or error or successfully implement a temporary correction or bypass within four (4) hours of the arrival at the Site, the Supplier shall, without any cost to the Government, engage the services of an independent expert, who may be an employee or agent of the developers of the particular defective software, to remedy the defect or error and/or effect a temporary correction or bypass. The independent expert shall arrive and commence work at the Site within four (4) days of the request for Remedial Support.
- 3.2.6 Forthwith upon such remedies being completed the Supplier shall deliver to the Government the corrected version of the object code of the Software in machine-readable form for loading on to the Hardware 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 on the Hardware.

4. HARDWARE MAINTENANCE

4.1 Hardware maintenance shall include the following:

4.1.1 **Routine Preventive Maintenance** i.e. maintenance of the Hardware in good working order including:

- (a) lubricating, cleaning and adjusting parts or devices of the Hardware;
- (b) running diagnostic programs on the Hardware;
- (c) the replacement, without cost to the Government, whether in respect of labour or parts etc., where replacement is necessary for the normal functioning of the Solution; and
- (d) any other test or adjustments necessary to keep the Hardware in the working order contemplated by the OBP Specifications.

The Schedule for Routine Preventive Maintenance shall be as specified in the 2nd Schedule. With the written consent of the Government, the Supplier may carry out such maintenance during an occasion of Remedial Maintenance in substitution for the next scheduled occasion for Routine Preventive Maintenance.

4.1.2 In Remedial Maintenance (i.e. the correction of any failure or malfunction of the Hardware during the Support Hours); the Supplier shall:

- (a) Upon receipt of notification from Government that the Hardware has failed or is malfunctioning, dispatch suitably qualified personnel to arrive at the Site within two (2) hours of the receipt of the notification to make such repairs and adjustments to and replace such parts of the Hardware as may be necessary to restore the Hardware to the working order contemplated in the OBP Specifications.
- (b) Where the Supplier is unable to restore any component part of the Hardware to the working order contemplated by the OBP Specifications within four (4) days from day of receipt of notification from the Government that the component has failed or is malfunctioning, the Supplier shall, without any cost to the Government, provide the Government with equipment which is functionally equivalent to the defective component ("**substitute equipment**") until the failure or malfunction is rectified. The substitute equipment shall be provided at the Site.

4.2 Any defective part removed from the Solution shall become the property of the Supplier when it is replaced by the Supplier at no cost to the Government with a good workable part.

4.3 The Supplier may at its option, and with the Government's written consent, at no cost to the Government, make modifications to the Hardware to improve the operation

and/or reliability of the Hardware.

5. EMERGENCY SERVICES

- 5.1 Emergency Services are Remedial Support for the Software and/or Remedial Maintenance for the Hardware provided by the Supplier upon receipt of notification from the Government outside the Support Hours of the Solution that the Software and/or the Hardware is defective or is malfunctioning.
- 5.2 The Supplier shall provide Emergency Services under this Clause for the Software and the Hardware upon request by the Government and Clauses 3 and 4 of this Maintenance Contract shall apply to Emergency Services in the same manner as they apply to Software Maintenance and Support, and Hardware Maintenance.
- 5.3 Notwithstanding anything herein contained the Government and the Supplier shall mutually agree on the scale of charges for Emergency Services under this Clause and in the absence of such agreement, the Government shall pay the Supplier for Emergency Services in accordance with the Supplier's then current charges for the same or similar services supplied to its most favored customer in Singapore.

6. ADDITIONAL ITEMS

- 6.1 The Government may, with the written consent of the Supplier, include other items of software and/or hardware, whether or not these are included in the Solution, within the purview of this Maintenance Contract and all terms and conditions set out therein shall apply to these additional items.

7. CHARGES

- 7.1 The Government shall pay the Supplier the charges as specified in the 3rd Schedule. The charges quoted shall be exclusive of GST on the services to be supplied by the Supplier. The Government shall reimburse the Supplier any GST chargeable on the services.
- 7.2 All charges payable under this Maintenance Contract shall commence as from the same date. Where any additional item is included within the purview of this Maintenance Contract after the commencement or renewal thereof, the agreement and charges payable in respect of those items shall be pro-rated on a daily basis on the basis of a 365 day year so as to be renewable as from the same date as the other items, Software or Hardware.
- 7.3 The Supplier shall invoice the Government on a monthly basis in accordance with such means and in such format as may be specified by the Government and the Government shall pay the amounts due within thirty (30) days of receipt of each invoice. All invoices shall be drawn and all payments shall be made in Singapore Dollars. The invoices shall also specify any GST payable by the Government.

7.4 Upon renewal of the agreement, the Supplier shall be entitled to increase the charges set out in 3rd Schedule in respect of items which have been covered by this agreement after five (5) year(s) of maintenance.

Provided:

- (a) The Supplier has given the Government at least ninety (90) days prior notice in writing of the intended revision; and
- (b) Any increase proposed by the Supplier shall not exceed five per cent (5%) of the then applicable charges.

7.5 Where and whenever a notice of intended revision of charges under Clause 7.4 of this Contract is received by the Government, the Government may terminate the whole of this Contract or may withdraw any item from coverage under this Contract by giving the Supplier at least thirty (30) days notice in writing of the same to take effect as from the date on which the Supplier's written notice of intended revision expires.

8. WARRANTY AND DEFAULT

8.1 The Supplier warrants as follows:

- (a) That all his personnel and those of his Sub-contractors or agents are suitably qualified and competent to carry out the tasks required of him under this Maintenance Contract;
- (b) That he shall carry out his obligations in conformity with the general accepted standards of skill, care and diligence appropriate to the nature of the service rendered;
- (c) That any equipment or material used by him, including debugging software, firmware or hardware, shall not interfere with the normal operation of the Solution during its Operating Hours;
- (d) That during the period covered by this Maintenance Contract, the Solution Availability Level shall not be less than ninety-five per cent (95%) for each calendar month or part thereof; and
- (e) That in the event he fails to conform to the terms of this Maintenance Contract and in particular the warranties given under this Clause, he shall, without request, take immediate action to remedy the same without any cost to the Government.

8.2 Where the Supplier fails or refuses to carry out his obligations under this Maintenance Contract and, in particular, the warranties set out above, the Government may itself employ and pay another party to undertake the performance thereof and may charge the Supplier for any expense, cost, damage or loss which the Government sustained on

account of the Supplier's default. The Supplier shall not be relieved of his obligations under this Maintenance Contract by the failure of the Government to make any inspection or discover any defective work or any aspect of the Supplier's default.

9. SUPPLIER'S RESPONSIBILITIES

9.1 The Supplier shall maintain a log of all his activities at the Site pursuant to this Maintenance Contract. The Supplier shall propose a format for the log and recommend procedures for its usage. The log will include but not be limited to the following:

- (a) date and time the Supplier is notified of any defect for malfunction;
- (b) date and time of arrival of the Supplier's personnel at the Site;
- (c) item or part of the Software or Hardware subject to investigation;
- (d) total time the Solution or part thereof is made unavailable to the Government;
- (e) description of defect(s), including cause(s);
- (f) corrective action taken, including temporary corrections, bypasses, etc.;
- (g) preventive action to be taken; and
- (h) tests performed and results.

9.2 Following every visit to the Site by the Supplier's personnel, the Supplier 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.

9.3 Where the Supplier is unable to rectify any defect or malfunction within four (4) hours from the time the Supplier is notified of the same, the Supplier shall immediately notify the Government giving pertinent details including the time by which it expects to complete the rectification. The notice shall be for information only and it shall not by itself result in a waiver by the Government of any rights or remedies the Government is entitled to under this Maintenance Contract.

9.4 The Supplier shall continue with its efforts to correct or rectify any defect or malfunction in the Software and/or the Hardware reported to it until such time as the defect or malfunction is corrected or restored such as to enable the Solution to operate in the manner contemplated in the OBP Specifications, unless the Supplier is able to satisfy the Government that the defect or malfunction is due to a factor for which the Government is responsible.

9.5 The Supplier shall, even where a defect or malfunction in the Solution is due to a factor for which the Government is responsible, assist the Government to correct

and/or rectify the defect or malfunction on the agreement of the Government to pay the Supplier his charges on the same basis as charges for Emergency Services.

- 9.6 Any software or equipment of any kind used by the Supplier to carry out his obligations shall be deemed to be included in the charges payable for such services and shall not interfere with the normal operations of the Solution. Any debugging tools incorporated into the Solution shall become the property of the Government.
- 9.7 The Supplier shall, at the request of the Government, supervise the dismantling, packing, unpacking, inspection and re-installation of the Solution or part thereof where the Solution or part thereof is moved from one location to another in Singapore provided that the Government has given at least thirty (30) days notice of its intention to move the Solution or part thereof to the Supplier.
- 9.8 The Supplier shall fully comply with any written instructions on information security matters (including IT Security Best Practices) that may be issued by the Government.

10. GOVERNMENT'S RESPONSIBILITIES

10.1 The Government shall:

- (a) ensure that proper environmental conditions are maintained for the Solution and shall maintain in good condition the accommodation of the Hardware, the cables and fitting associated therewith and the electricity supply thereto;
- (b) provide the Supplier reasonable access to the Solution to enable the Supplier to carry out his obligations provided that such access shall not interfere with the normal operations of the Government;
- (c) not make any modification to the Solution without the Supplier's prior written consent except for:
 - (i) modifications made in accordance with or pursuant to documentation provided by the Supplier;
 - (ii) modifications to the Solution to enable it to meet the OBP Specifications or such additional requirements as may be agreed between the Government and the Supplier;
 - (iii) configuration of the Solution;
 - (iv) installation of approved software into the Solution; or
 - (v) installation of software or types of software which the Solution is intended to work with;
- (d) operate the Solution in a prudent manner in accordance with the Standard Instructions of the manufacturers of the Solution or the advice of the Supplier;
- (e) not attempt to adjust, repair or maintain the Solution nor request, permit or authorise any person other than the Supplier or persons approved by the Supplier to carry out adjustments, repair or maintenance to the Solution; and

- (f) promptly notify the Supplier if the Software or Hardware or the Solution as a whole requires maintenance or is not operating correctly.

10.2 The Government shall use only current release of the Software that is available and shall not alter, modify or copy the Software except with the permission of the Supplier.

11. CONFIDENTIALITY

11.1 The Supplier shall ensure all his personnel and those of his Sub-contractors or agents who are or may be involved in the execution of his obligations under this Maintenance Contract complies with the provisions of the *Official Secrets Act* and that if so requested by the Government each of them shall sign an undertaking to safeguard official information in the form set out in Schedule 5 of **Part 1 Section C Conditions of Contract for Final Award**.

12. OWNERSHIP OF INTELLECTUAL PROPERTY & PATENT, COPYRIGHT AND OTHER INDEMNIFICATION

12.1 Clauses 31 (Ownership of Intellectual Property) and 35 (Intellectual Property Indemnification) of **Part 1 Section C Conditions of Contract for Final Award** shall apply *mutatis mutandis* to all corrected and modified versions of the Software and the Parties hereby undertake to be bound by and to comply with the terms thereof accordingly.

12.2 Any termination of this Maintenance Contract (howsoever occasioned) shall not affect the Government's right to continue to use the then current version of the Software in accordance with the provisions of the rights granted by the Supplier pursuant to Clause 31 (Ownership of Intellectual Property) of **Part 1 Section C Conditions of Contract for Final Award**.

12A. UNAUTHORISED CODE

12A.1 The Supplier warrants that all magnetic or other storage media and other materials capable of being stored on such media:

- (i) supplied as a software or part thereof or with any software; or
- (ii) used in the performance of the Contract and this Maintenance Contract,

shall not contain any Unauthorised Code.

12A.2 Prior to and at the time of delivery and installation, the Supplier shall conduct a complete and thorough scan for Unauthorised Code using anti-virus software package(s) on all software and materials provided under this Maintenance Contract.

12A.3 In the case of breach of Clause 12A.1 above, the Supplier shall indemnify the Government fully against all costs incurred by the Government in the course of or incidental to removing the Unauthorised Code and recovering any lost or damaged data or software.

12A.4 In this Clause, “**Unauthorised Code**” means any virus, Trojan horse, worm, logic bomb or other software routine or hardware components designed to permit unauthorised access, to disable, erase, or otherwise harm software, hardware or data, or to perform any such actions.

13. DAMAGE AND INJURY TO PERSONS AND PROPERTY

13.1 The Supplier shall indemnify and reimburse the Government in respect of all liabilities and losses incurred or suffered and sums paid by the Government, whether in satisfaction of court, arbitral or expert award or settlement sum (including costs and expenses on a full indemnity basis and experts’ and consultants’ fees) arising out of or in connection with any act or omission on the part of the Supplier, Subcontractor or any of their officers, employees, or agents (the “**Supplier Parties**”) unless the Supplier can show that it is not due to:

- (a) any negligent, unlawful or wrongful action or omission or any breach of duty of the Supplier Parties; and
- (b) the Supplier’s breach, failure or delay in performance of this Contract.

13.2 The Customer shall give notice to the Supplier as soon as practicable if a third party makes a claim or notifies of an intention to a make claim against the Customer which may reasonably be construed to give rise to a liability under this Clause.

13.3 Upon receipt of such notice and if requested by the Government, the Supplier shall immediately take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Government to handle and defend the same, at the Supplier’s sole cost and expense.

13.4 The Government shall cooperate, at the cost of the Supplier, in all reasonable respects with the Supplier and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom. This will however not limit the Government’s right to participate, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal therefrom and the Supplier shall bear all reasonable costs and expenses arising from such participation. No settlement of a claim that involves a remedy other than the payment of money by the Supplier shall be entered into without the consent of the Government as the case may be.

13.5 In the event that the Supplier does not immediately assume full control over the defence of such claim, the Government shall have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Supplier.

13.6 This Clause 13 shall survive the termination or expiry of this Contract.

14. FORCE MAJEURE

14.1 Neither the Supplier nor the Government shall be liable for any failure to perform obligations under this Maintenance Contract if the failure results from events which are beyond their reasonable control (a “**Force Majeure Event**”), except that the affected party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of this Maintenance Contract, such acts shall include acts of God, civil or military authority, civil disturbance, wars, strikes, fires or other catastrophes.

14.2 If the effect of any Force Majeure Event continues for more than three (3) months the Government may give notice to the Supplier to terminate the Maintenance Contract with immediate effect without being liable to the Supplier in damages or compensation.

14.3 Where the Government elects to terminate this Maintenance Contract under Clause 14.2, the Supplier shall forthwith refund to the Government all amounts paid to the Supplier less the price of Services which have been provided to the Government.

14.4 If a Force Majeure Event occurs, the Supplier or the Government (as the case may be) shall for the duration of such Force Majeure Event be relieved of any obligation under this Maintenance Contract as is affected by the Force Majeure Event save that the provisions of this Contract shall remain in force with regard to all other obligations under this Maintenance Contract which are not affected by the Force Majeure Event.

14.5 A Party cannot claim relief under this Clause based on a failure or delay by his Sub-Contractor in the performance of the Sub-Contractor's contractual obligations with the Party.

15. DURATION AND TERMINATION

15.1 This Maintenance Contract shall come into effect on the day after the expiry of the Solution Warranty Period and shall be for up to five (5) years, subjected to renewal by Enterprise Singapore on a yearly basis until the expiry of the Life-Span of the Solution or such time as it is terminated under the provisions of this Clause, whichever is earlier.

15.1.1 The Government may terminate this agreement by giving at least thirty (30) days notice in writing to the Supplier without providing any reason.

15.2 The Government may forthwith on giving notice in writing to the Supplier terminate this agreement

- (a) if the Solution or any substantial part thereof is lost, stolen or damaged beyond economic repair; or

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- (b) if the Supplier, being a company, shall have a receiver or liquidator appointed or shall pass a resolution for winding-up (otherwise than for the purpose of amalgamation or reconstruction) or is subject to a court order having the same effect, or being a partnership shall be dissolved or being an individual shall be adjudicated a bankrupt or dies or if the Supplier (whether a company or not) entered into any composition or arrangements with its creditors or becomes insolvent.
- 15.3 The Government may terminate this agreement by giving at least seven (7) days notice in writing to the Supplier where the Supplier has breached or failed to observe any term of this Maintenance Contract or generally failed to perform his obligations under this Maintenance Contract in the manner contemplated by this Maintenance Contract and has failed to remedy the failure or default within a period of thirty (30) days from the receipt of a notice in writing by the Government requiring the Supplier so to do.
- 15.4 The Supplier may terminate this Maintenance Contract by giving at least seven (7) days notice in writing to the Government where the Government has failed to make any payment due under this Maintenance Contract or has materially defaulted in carrying out its obligations under this Maintenance Contract to the extent that the Supplier is unable to properly carry out the Supplier's obligations under the said contract and has failed to make the payments due or remedy the material default within a period of thirty (30) days from the receipt of a notice in writing from the Supplier requiring the Government so to do.
- 15.5 On the termination of this Maintenance Contract, any monies or fees paid in advance by the Government shall, without affecting any remedy which the Government may have for any breach of this agreement by the Supplier, be pro-rated and refunded to the Government.
- 15.6 Any termination of this agreement, 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 this Maintenance Contract be affected.
- 15.7 In the event of any termination or expiration of this Maintenance Contract however caused, the Supplier shall conduct a thorough inspection of the Solution together with the Government or its nominated contractor to fully ascertain the condition of the Solution at the date of such termination or expiration and sign a mutually agreed certificate in respect of the findings of such inspection. If any of the following is discovered:
- (a) any obligations of the Supplier under this Maintenance Contract which remains undischarged ;
 - (b) any defect, malfunction or error in the Hardware and/or Software which was rectified in a manner which would render future maintenance effort more costly, inconvenient or cumbersome;

the Supplier shall, upon request by the Government, remedy the foregoing to the

Government's satisfaction, failing which, the Government may:

- (i) remedy the matters referred to in paragraphs (a) and (b) above and the Supplier shall indemnify the Government against all costs incurred in relation thereto; or
- (ii) hand the Solution over to a new maintenance contractor without remedying the matters referred to in paragraphs (a) and (b) above, in which event the Supplier shall indemnify the Government against all increased maintenance charges required by the new maintenance contractor on account of the matters referred to in paragraphs (a) and (b) above.

16. APPLICABLE LAW

- 16.1 This Maintenance Contract shall be subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose and the Parties to submit to the exclusive jurisdiction of the Courts of Singapore.

17. LIST OF SCHEDULES

The Tenderer shall attach the following schedules:

17.1 1st Schedule

- (a) List of Software covered under this Maintenance Contract;
- (b) List of Hardware covered under this Maintenance Contract.

17.2 2nd Schedule

This schedule shall cover the Preventive Maintenance Schedule. Preventive Maintenance on the Equipment will be carried out once every month at a convenient day and time to be mutually agreed upon between the Government and the Supplier.

17.3 3rd Schedule

This schedule shall specify the Monthly Maintenance Charges of all software and equipment covered under this Maintenance Agreement. The charges quoted shall be exclusive of GST.

18. MEDIATION CLAUSE

- 18.1 Notwithstanding anything in this Maintenance Contract, in the event of any dispute, claim, question or disagreement arising out of or in relation to this Maintenance Contract, no Party shall proceed to litigation or any other form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation

in accordance with the mediation rules of the Singapore Mediation Centre. The Parties shall be deemed to have made reasonable efforts if they have gone through at least one mediation session at the Singapore Mediation Centre.

- 18.2 A Party who receives a written notice for mediation from the other Party shall consent and participate in the mediation process or shall be deemed to be in breach of contract.
- 18.3 The mediation session is to commence no later than ninety (90) calendar days from the date of the written notice of mediation failing which either Party may commence any other form of dispute resolution.
- 18.4 A failure to comply with Clauses 18.1 or 18.2 shall be deemed to be a breach of contract.

19. CONTRACTS (RIGHTS OF THIRD PARTIES)

- 19.1 This Maintenance Contract does not create any right under the *Contracts (Rights of Third Parties) Act*, which is enforceable by any person who is not a party to it.

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21 LIMITATION OF LIABILITY

- 21.1 In the event of any breach or default of a term of this Maintenance Contract, the Supplier's cumulative liability shall not exceed 100% of the annual maintenance charges.
- 21.2 In the event of any breach or default of a term of this Maintenance Contract, the Government's cumulative liability shall not exceed the 100% of the annual maintenance charges.
- 21.3 For the avoidance of doubt, Clause 21.1 and 21.2 shall not apply to any claim relating to any:
- a) death or personal injury,
 - b) patent, copyright or other intellectual property right infringement,
 - c) indemnity provided under this Maintenance Contract,
 - d) liquidated damages recoverable under this Maintenance Contract; or
 - e) which arises or is increased as a consequence of fraud, fraudulent misrepresentation, willful misconduct or gross negligence by the Supplier, its Sub-contractors or any of their respective directors, officers, employees or agents.

22 OWNERSHIP OF DOCUMENTATION AND DISPOSAL OF DOCUMENTATION UPON TERMINATION OF MAINTENANCE CONTRACT OR COMPLETION OF MAINTENANCE CONTRACT

- 22.1 The Government shall own all the documentation generated for the purpose of this Maintenance Contract.
- 22.2 The Supplier, his servants, employees, agents and Sub-contractors shall within seven (7) days upon the termination of this Maintenance Contract or upon the completion of this Maintenance Contract:
- a) return to the Representative all property, documents, papers and copies of thereof:
 - i. belonging to the Government;
 - ii. received from the Government for the purpose of this Maintenance Contract; or
 - iii. produced in the course of this Maintenance Contract,which may be in their possession or under their control; and
 - b) securely destroy and erase all softcopies of documentation that exist in hard disks, removable storage media and other storage media or facility whatsoever.
- 22.3 Upon completion of the obligation under Clause 22.2, the Supplier shall procure that his employees, servants, agents and/or Sub-contractors shall sign the Declaration, with the relevant references, as stipulated in Schedule 5A of **Part 1 Section C Conditions of Contract for Final Award**.