

## Conditions of Contract

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## 1. Interpretation

1.1 In this document, unless the context otherwise requires,

- “Acceptance Certificate” means a certificate to be issued by the Government pursuant to Clause 13 of the Conditions of Contract.
- “Acceptance Date” means in relation to a batch of Items, the date of the Acceptance Certificate for that batch.
- “accepted batch” means a batch of Add-on Hardware and/or Add-on Software which has been accepted through the issue of Acceptance Certificate. The term “accepted batches” means all of them.
- “Add-on Hardware” means a hardware item specified in Schedule 1 of Contract Schedules together with its Bundled Software and Documentation; references to Add-on Hardware may include any replacement unit from time to time supplied as part of the Maintenance Services, and any substitute units to be supplied in compliance with Clause 21 of the Conditions of Contract (if any).
- “Add-on Software” means a software item specified in Schedule 2 of Contract Schedules and its Documentation; references to Add-on Software may include all and any updates from time to time supplied as part of the Maintenance Services, and any substitute units to be supplied in compliance with Clause 21 of the Conditions of Contract (if any).
- “Add-on Software (Free from Annual Maintenance Charge)” means a Maintenance Item which is an Add-on Software and in respect of which the updates can be obtained from the manufacturer free of charge.
- “Annual Maintenance Charges” means in relation to a Maintenance Item, the total Annual Maintenance Charges for the quantities specified in the Relevant Schedule for such Maintenance Item; and “Maintenance Charges” mean the amount chargeable per billing period based on the rate of the Annual Maintenance Charges.

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- “Batch(es) of Add-on Hardware and/or Add-on Software” or “Batch(es) of Items” or “Batch(es)” (the word “Batch(es)” may appear in upper or lower case) means in relation to an Order, the quantity of Items covered by that Order. Where the Items covered by an Order are Add-on Hardware only, references to “Batch of Add-on Hardware and/or Add-on Software” shall just mean Add-on Hardware. The same in the case of Add-on Software. Where the Items covered by an Order are both Add-on Hardware and Add-on Software, references to “Batch of Add-on Hardware and/or Add-on Software” shall mean both. All provisions in the Contract applicable to “a Batch of Items” or “a Batch of Add-on Hardware and/or Add-on Software” or “a Batch of Goods” shall be applicable to each Order and the Batch of Add-on Hardware and/or Add-on Software to which it relates.
- “Brief” means a brief to be issued by a Government B/D inviting GITP Providers to submit a Proposal.
- “Bundled Software” means a software or a device driver or any other program which is required to be installed on or accompanied with an Item of Add-on Hardware to be provided to ensure that an Item of Add-on Hardware or any part thereof can be operated under the operating system software for such Add-on Hardware (if any). For the avoidance of doubt, references to Bundled Software include any substitute unit to be supplied in compliance with Clause 21 of the Conditions of Contract (if any) and updates to be supplied as part of the Maintenance Services for the Add-on Hardware incorporating such Bundled Software.
- “Category” means the category to which an item of Add-on Hardware and/or an item of Add-on Software belong under the GITP scheme. There are three Categories A, B and C in the GITP scheme and in each case comprising its own sub-categories. Depending on the Proposal Acceptance issued to the Contractor, all items to be procured under this Contract shall belong to the same sub-category, or one or more sub-

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categories of the same Category or different Categories.

“Completion Date” means in relation to a Batch of Add-on Hardware or Add-on Software, the date specified in the Implementation Plan by which the Contractor shall provide such batch Ready for Use.

“Contract” or “Individual Contract” means the contract between the Government (as represented by the Government B/D which issued the relevant Brief) and the Contractor comprising the following:

- (a) the “Contract Schedules” including those which were submitted by the Contractor as part of its Proposal for the Individual Contract, and accepted by the Government, subject to such further changes as the Government may stipulate in exercise of its powers under the Brief, and/or otherwise subject to such further changes as the Government and the Contractor may agree;
- (b) the Overall Specifications;
- (c) these “Conditions of Contract”;
- (d) the “Proposal Acceptance” issued by the Government B/D Representative for the award of this Individual Contract to the Contractor;
- (e) the “Brief”;
- (f) the “Proposal”; and
- (g) all other schedules, plans, drawings and other documents which form part of the Contractor’s Proposal or are incorporated by reference herein or in any of the above documents.

(but where the Brief covers multiple Groups, excluding those parts of the Brief, the Contract Schedules and Proposal in relation to such Group(s) which have not been awarded to the Contractor as per the Proposal Acceptance (where applicable))

(copy of each of the above, except for items which are incorporated by reference and except for those items are available for download from the GITP website, is despatched to the Contractor for identification purposes as mentioned in paragraph 12.2 of the Brief), and each of the above documents

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shall be referred to in this Individual Contract by the above names in quotation marks.

References to “the Contract” or “this Contract” shall mean the same Contract as defined above.

- “Contract Period” has the meaning given to it in Clause 2.1 of the Conditions of Contract.
- “Contractor” means the Supplier to whom the Contract is awarded.
- “Contractor Offered Specifications” means in relation to an Add-on Hardware or Add-on Software quoted by the Contractor in the Relevant Schedule, the specifications submitted by it to the Scheme Administrator in the two forms titled “Details of Sample IT Products” (Excel document) and “Specifications for Sample IT Products” (Word document) or otherwise whether upon application to join the GITP scheme or from time to time for compilation or updating of the reference lists of IT products. The reference lists as produced by the Government Representative or the Government B/D Representative shall be conclusive on the Contractor in the absence of manifest error.
- “Contractor Personnel” means all employees, agents and sub-contractors (of whatever tier) of the Contractor deployed for performing the Contract (or any part thereof) and all employees and agents of such sub-contractors.
- “Contractor Representative” means the person duly authorised by the Contractor to act for and on behalf of the Contractor for the purposes of this Contract.
- “Date of Acceptance of Proposal” means the date of Proposal Acceptance issued by the Government to the Contractor indicating its acceptance of the Contractor’s Proposal (or such part thereof in relation to such Group(s) where applicable) for the Contract.
- “Deliverables” means all tangible and intangible subject matters to be developed or provided by the Contractor to the Government pursuant to this Contract apart from the

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Items, including Documentation, compilations of data, configurations, designs, circuit diagrams, specifications, drawings, reports, plans, models, documents and other materials (including all drafts of any of the aforementioned items).

“Delivery Date”

means in relation to a Batch of Add-on Hardware or Add-on Software, the date and time for delivery of such batch as specified in the Brief and/or an Order for such Batch or as subsequently stipulated by the Government B/D Representative for such batch.

“Documentation”

means the operating manuals, user instructions, technical literature and all other related materials supplied to the Government by the Contractor in respect of one unit of Add-on Hardware or one Unit Licence of an Add-on Software.

“e-Procurement System”

means the platform for issuing a Brief or for submitting a Proposal.

“Estimated Contract Price”

means (i) the total quantities of the Add-on Hardware and/or total quantities for Add-on Software and/or Support Services as specified in the Relevant Schedules and multiplied by the applicable Unit Purchase Prices and/or Unit Licence Fees and/or Unit Charging Rates (as the case may be); and (ii) plus the total quantities of Maintenance Items which are Add-on Hardware and/or Unit Licences of Maintenance Items which are Add-on Software for which the Maintenance Services are permitted to be chargeable as specified in the Relevant Schedules multiplied by the applicable Unit Annual Maintenance Charges and further multiplied by the number of years of Maintenance Period less the Warranty Period; and (iii) less the amount of all Trade-in Items in the quantities specified in Schedule 12 of Contract Schedules multiplied by the applicable Trade-in Price (if any).

“Existing Hardware”

means the existing computer and/or computer peripheral equipment items together with any of

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	<p>their additions or replacement which are used by the Government and which are supplied other than under this Contract including those specified as Existing Hardware in the Brief, which the Add-on Hardware and/or Add-on Software may have to be installed on or connected or integrated with, or in relation to which the Support Services is required (depending on the requirements of the Contract).</p>
“Existing Software”	<p>means the software which is owned by the Government or used by the Government under licence and which is supplied other than under this Contract including those specified as Existing Software in the Brief, which the Add-on Hardware and/or Add-on Software may have to be installed on or connected or integrated with, or in relation to which the Support Services is required (depending on the requirements of the Contract).</p>
“GITP” or “GITP scheme”	<p>means the listing arrangement for the supply of IT products and related services to Government B/Ds administered by the Office of the Government Information Chief Officer.</p>
“GITP Basic Requirements”	<p>means in relation to an Add-on Hardware or Add-on Software, those basic requirements as set out in the Reference Technical Requirements for IT Products, but subject to any contrary provisions in the Brief.</p>
“Function Tests”	<p>means the tests identified as such to be conducted by the Contractor in accordance with the requirements of the Contract including Clause 10 of the Conditions of Contract and Schedule 6 of the Contract Schedules.</p>
“given period” (in upper or lower case)	<p>has the meaning given to it in Clause 16.1 of the Conditions of Contract.</p>
“GITP Provider” or “Supplier”	<p>means a person who is on the list of providers in relation to a sub-category of IT products to which the Add-on Hardware and/or Add-on Software belong under the GITP.</p>



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“Goods”	means the Add-on Hardware and/or the Add-on Software in such quantities as from time to time ordered by the Government within the applicable period specified in Clause 3.1 of the Conditions of Contract.
“Government”	means the Government of Hong Kong.
“Government Representative”	means (a) the Government Chief Information Officer ; and  (b) any other officer authorised by the officer referred to in (a) above for the purpose of the Contract.
“Government B/D”	means a Government department or bureau which intends to appoint or has appointed a Contractor for the performance of an Individual Contract.
“Government B/D Representative”	means the head of the Government B/D which has issued a Brief for the Contract, or any person authorised by him to act for and on his behalf for the purposes of such Individual Contract.
“Groups”	(applicable only if the Brief covers multiple Groups) means groups of Items each with the scope as ascribed to it in the Brief.
“Implementation Plan” or “Implementation Timetable”	means the time schedule and sequence of events for the performance of the Work (the details of which are set out in the Brief (if any), and subject thereto, also in Schedule 3 of Contract Schedules) subject to such changes as may be stipulated by the Government in exercise of its powers under the Contract, or such changes as the Government and the Contractor may agree.
“Installation Period”	means in relation to a Batch of Add-on Hardware or Add-on Software, the period specified in the Implementation Plan within which the Contractor shall install the batch of Add-on Hardware and/or Add-on Software at the respective Locations as specified in the Order for such batch.

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“Installation Tests”	means the tests identified as such to be conducted by the Contractor in accordance with the requirements of the Contract including Clause 10 of the Conditions of Contract and Schedule 5 of Contract Schedules.
“Intellectual Property Rights”	means patents, trademarks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.
“Invitation Documents”	means the screen pages of the e-Procurement System, the Brief and the Contract Schedules issued by the Government B/D to all GITP Providers on the list for the sub-category to which the Add-on Hardware and/or Add-on Software belong (or the Support Services concerning such items).
“Item” (in upper or lower case)	means an item of Add-on Hardware or an item of Add-on Software or an item of Support Services or an item of Trade-in Services with a unique requirement number assigned to it based on the Brief and specified in Schedule 1, 2, 9 or 12 of Contract Schedules respectively.
“Licence”	has the meaning given to the term in the last paragraph of Clause 20.5 of the Conditions of Contract.
“Location” or “Locations”	means the locations at which the Add-on Hardware and/or Add-on Software are to be installed or Support Services are to be performed as specified in each Order. The locations include those as stated in the Brief and such other locations as may be designated by the Government B/D Representative from time to time; “Location” means any one of them.

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“Maintenance Items”	means any Add-on Hardware, or any Add-on Software, in respect of which Unit Annual Maintenance Charge has been quoted in the Relevant Schedule for such Add-on Hardware or Add-on Software, and that it is further confirmed to that it shall continue to receive Maintenance Services after the Warranty Period in the Order for such Item(s), and “Maintenance Item” means any one of them.
“Maintenance Period”	means in respect of each Batch of Items, the period specified in the Brief under the heading “Maintenance Requirement” including Warranty Period commencing from the Acceptance Date for such batch, unless earlier terminated or extended.
“Maintenance Services”	means the maintenance services to be provided by the Contractor pursuant to all applicable provisions of the Contract including Clause 15 of the Conditions of Contract, Schedule 11 of the Contract Schedules and the Reference Maintenance Service Requirements for IT Products.
“Order”	means either (a) an order for Item(s) as stated in the Brief; or (b) an order for Item(s) which may from time to time issued by the Government B/D Representative within the applicable period specified in Clause 3.1 of the Conditions of Contract.
“Overall Specifications”	means in relation to each of the Items, the specifications set out in the Brief, the Schedules of Contract Schedules, the GITP Basic Requirements, the Contractor Offered Specifications, and any specifications published by the Contractor or the manufacturers or developers in respect of the Items and attached to the Proposal or otherwise published by the manufacturer.
“Performance Criteria”	means the performance criteria which the System shall fulfil as specified in the Brief.
“Price” or “Contract Price”	means in relation to a batch of Items or any quantity thereof, the aggregate Unit Purchase Prices and/or

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aggregate Unit Licence Fees and/or aggregate Unit Charging Rates payable for all Items covered by that batch or the relevant quantity thereof.

- “Proposal” means in the context of the Brief: a Supplier’s proposal to be set out in the Contract Schedules to offer the Add-on Hardware and/or Add-on Software and/or Support Services and/or Maintenance Services and/or Trade-in Services to the Government B/D as requested by the Government B/D the Brief, the Offer to be Bound and other information submitted via the e-Procurement System; and  
in the context of the Contract: the completed Contract Schedules from the Contractor including all modifications as agreed between the Government B/D Representative and the Contractor (if any) in the form attached to the Proposal Acceptance (but where the Brief covers multiple Groups, excluding those parts of the Contract Schedules in relation to such Group(s) which have not been awarded to the Contractor as per the Proposal Acceptance (where applicable))
- “Ready for Use” means fully installed and tested and successfully completed the Installation Tests and the System Acceptance Tests in accordance with the Contract.
- “Reference Technical Requirements for IT Products” means the document titled as such and published on the GITP Website (as from time to time revised) for the Category to which the Add-on Hardware and Add-on Software belong.
- “Reference Maintenance Service Requirements” means the document titled as such and published on the GITP Website (as from time to time revised) applicable regardless of the Category or sub-category with such Category, subject to the provisions as stated in the Brief.
- “Relevant Schedule” means in the case of Add-on Hardware, Schedule 1 of Contract Schedules; in the case of Add-on Software, Schedule 2 of Contract Schedules; in the case of Support Services, Schedule 9 of Contract Schedules; and in the case of Trade-in Items,

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	<p>Schedule 12 of Contract Schedules (but where the Brief covers multiple Groups, excluding those parts of the Contract Schedules in relation to such Group(s) which have not been awarded to the Contractor as per the Proposal Acceptance (where applicable)).</p>
“Reliability Levels”	<p>means in the case of Category A or B, the Committed Serviceability Level and Committed MTBF (both terms as defined in Schedule 8 of Contract Schedules for these two Categories); and in the case of Category C, the Committed Serviceability Level (as defined in Schedule 8 of Contract Schedules for this Category).</p>
“Reliability Specifications”	<p>means the specifications concerning reliability set out in the Overall Specifications including the Reliability Levels.</p>
“Reliability Tests”	<p>means the tests identified as such to be carried out by the Government pursuant to Clause 10.1(ii) of the Conditions of Contract.</p>
“Services”	<p>means all work to be done to ensure that each Batch of Add-on Hardware and/or Add-on Software is Ready for Use in accordance with all terms of the Contract (including for the avoidance of doubt the sale or supply of all and any Items as specified in the Contract); and</p> <p>depending further on the scope of the Services as requested in the Brief: the Support Services and/or the Maintenance Services and all other services, obligations and duties to be provided and performed by the Contractor under the Contract.</p>
“Support Services”	<p>means such services as specified in Schedule 9 of Contract Schedules.</p>
“System” or “whole operating unit(s)”	<p>means in relation to one or more batch(es) of Add-on Hardware and/or Add-on Software, the total quantities of the items comprised in that (or these) batch(es) of Add-on Hardware and/or Add-on</p>

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Software and (a) depending on the Implementation Plan, whether with or without other hardware and/or software to be supplied by another GITP provider appointed under the same Brief, and (b) depending on the Overall Specifications, whether with or without any Existing Hardware and/or Existing Software, altogether to be installed and integrated as one or more whole operating unit(s) in accordance with the Overall Specifications. References to “operating unit(s)” covered by a (or the or that) batch of Add-on Hardware and/or Software shall have the same meaning.

“System Acceptance Tests”	means the Function Tests and the Reliability Tests to be carried out pursuant to Clause 10 of the Conditions of Contract.
“Trade-in Items”	means the items specified in Schedule 12 of the Contract Schedules.
“Trade-in Price”	means in relation to a Trade-in Item, the price quoted in Schedule 12 of the Contract Schedules for that Trade-in Item.
“Unit Annual Maintenance Charge”	means in relation to a Maintenance Item which is chargeable but not otherwise, the Annual Maintenance Charges for the provision of the Maintenance Services for one unit of an Add-on Hardware or for one Unit Licence of an Add-on Software (where applicable). Where an Add-on Software is subscription-based, the Unit Annual Maintenance Charge shall include and be deemed to include the unit licence fee for the subscription to such Add-on Software on an annual basis as well as for the Maintenance Services.
“Unit Price” (in upper or lower case)	means the Unit Purchase Price or Unit Licence Fee or Unit Charging Rate or Unit Annual Maintenance Charge.
“Unit Charging Rate”	means the one-time lump sum charging rate for an Item of Support Services specified in Schedule 9 of Contract Schedules.

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- “Unit Licence Fee” means the one-time unit licence price for an Item of Add-on Software specified in Schedule 2 of Contract Schedules.
- “Unit Purchase Price” means in relation to an Add-on Hardware, the one-time unit price for one unit of such Add-on Hardware specified in Schedule 1 of Contract Schedules.
- “updates” (or “upgrades and enhancements” as defined in the Reference Maintenance Service Requirement) (subject to any express exclusion as stated in the Brief) include updates, patches, service packs, technical maintenance support packages and other new or supplement releases howsoever described from time to time issued or made available to other customers in the retail market by the manufacturer / developer of the Add-on Software together with all manuals, documentation and technical literature published by the manufacturer / developer in conjunction with such releases. Unless otherwise specified in the Brief, the updates shall not cover version upgrade.
- “Warranties” has the meaning given to the term in Clause 17.2 of this document.
- “Warranty Period” means in relation to a Batch of Add-on Hardware and/or Add-on Software, a period of 12 months or such longer period as specified in Schedule 1 or Schedule 2 of Contract Schedules starting from the Acceptance Date for that batch whichever is longer.
- “Work” means Services.

1.2 In the Invitation Documents and the Contract, unless the context otherwise requires, the following rules of interpretation shall apply:

1.2.1 references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;

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- 1.2.2 words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include references to any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- 1.2.3 clauses headings are inserted for convenience of reference only and shall not affect the construction;
- 1.2.4 references to a document shall:
- (a) include all schedules, appendices and annexes attached to such document; and
  - (b) mean the same as from time to time amended or supplemented;
- 1.2.5 references to “Bidder” and “Contractor” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
- 1.2.6 references to “Government” shall include its assigns, successors-in-title, and persons deriving title under any of them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- 1.2.7 references to Clauses or Sections of, and Appendices or Annexes to a document comprising the Contract shall, unless otherwise specified, mean the clauses and sections of, and appendices and annexes to, that document;
- 1.2.8 references to “laws” and “regulations” or “law” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity regardless of the jurisdiction;
- 1.2.9 references to “the Add-on Hardware and/or Software” or “the Add-on Hardware and/or Add-on Software” shall mean the Add-on Hardware and/or Add-on Software; references to “Existing Hardware and/or Software” shall mean the Existing Hardware and/or the Existing Software;
- 1.2.10 a term defined in any one of the documents comprising the Contract shall have the same meaning throughout the Contract; the same for the Invitation Documents;
- 1.2.11 a time of day shall be construed as a reference to Hong Kong time;



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- 1.2.12 references to a “month” mean a calendar month;
- 1.2.13 any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
- 1.2.14 any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor (including the Contractor Personnel) shall be deemed to be the act, default, neglect or omission of the Contractor;
- 1.2.15 words importing the whole shall be treated as including a reference to any part of the whole;
- 1.2.16 the expressions “include” and “including” shall mean including without limitation basis regardless of whether it is expressly so provided;
- 1.2.17 unless otherwise expressly stated, there is no difference in the intended meaning of:
- (a) the terms “provided by” and “supplied by”;
  - (b) the terms “requirements” and “specifications” ;
  - (c) the terms “costs” and “expenses” (plural or singular); and
  - (d) the terms “at its costs” or “at its sole costs” or “at its own costs”;
- 1.2.18 words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Contract or by reference to any other definition;
- 1.2.19 references to “in writing” include manuscript, typewriting, printing, lithography, photography, facsimile, electronic mail, information which can be viewed on the e-Procurement System, and any other modes of representing and reproducing words in a legible form;
- 1.2.20 any acceptance, approval, consent or agreement of the Government shall be evidenced in writing unless otherwise waived by the Government in writing; and no such acceptance, approval, consent or agreement shall

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relieve the Contractor from its obligation to exercise all necessary skill, care and diligence in the performance of the Work; without prejudice to the foregoing, no acceptance, approval, consent or agreement on the part of the Government shall constitute as a waiver of any right or claim of the Government if any such acceptance, approval, consent or agreement is given under mistake of fact or law (save in the case of gross negligence on the part of the Government), or otherwise based on any representation from the Contractor which is untrue, incomplete, inaccurate or fraudulent, or otherwise where any acceptance, approval, consent, or agreement is given before any defect or default is discovered and which defect or default cannot be reasonably discovered at the time of acceptance, approval, consent or agreement;

- 1.2.21 where a general obligation in this Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed;
- 1.2.22 references to something done by the Contractor include something done by anyone of the Contractor Personnel or any other person for or on behalf of the Contractor;
- 1.2.23 unless covered by the Charges, the Contractor shall perform all its obligations under the Contract at its sole costs and expenses regardless of whether or not it is expressly stated the case in any individual provision;
- 1.2.24 all rights and powers of the Government under the Contract may be exercised by the Government B/D Representative or the Government Representative; and
- 1.2.25 references to “Cap” or “Chapter” followed by a number mean a chapter of the Laws of Hong Kong.
- 1.3 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
- 1.4 Unless otherwise defined in these Conditions of Contract, terms and expressions defined in the GITP Scheme Participation Terms and Conditions shall have the same meaning when appearing in the Invitation Documents or the Contract.

### **2. Contract Period and Products and Services to be Provided**

2.1 Where this Contract concerns the provision of Add-on Hardware and/or Add-on Software, the Contract Period for this Contract shall be effective from the Date of Acceptance of Proposal to the end of the Maintenance Period for the last batch of Add-on Hardware and/or Add-on Software. Where this Contract concerns only the provision of Support Services, the Contract Period for this Contract shall be effective from the Date of Acceptance of Proposal until the completion of the Support Services and related Deliverables to the satisfaction of the Government. Where this Contract concerns both, the later of either date shall be taken as the last date of the Contract Period.

2.2 Where the Contract concerns the provision of Add-on Hardware and/or Add-on Software, the Contractor hereby agrees to do the following in accordance with all of the terms and conditions of the Contract to the satisfaction of the Government:

- (i) supply to the Government such quantity of the Add-on Hardware and/or Add-on Software and where applicable Support Services as from time to time ordered by the Government pursuant to Clause 3 of the Conditions of Contract free from all third party claims, charges and encumbrances of whatsoever nature;
- (ii) deliver each batch of Add-on Hardware and/or Add-on Software and install the System at the applicable Location(s) as specified in the relevant Order for that batch of Add-on Hardware and/or Add-on Software (further details are set out in Clause 7 of the Conditions of Contract);
- (iii) provide the whole operating unit(s) covered by each batch of Add-on Hardware and/or Add-on Software” in Ready for Use condition by the Completion Date for such batch of Add-on Hardware and/or Add-on Software;
- (iv) (if requested in the Brief) provide services for the Trade-in Items as specified in Clause 29 of the Conditions of Contract; and
- (v) provide the Maintenance Services for each batch of Add-on Hardware and/or Add-on Software throughout the Warranty Period for that batch and thereafter for the Maintenance Items covered by the batch throughout the remainder of the Maintenance Period.

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2.3 Where the Contract concerns the provision of Support Services, the Contractor hereby agrees to perform the Support Services in full accordance with the requirements of the Contract.

### **3. Contractor's Acknowledgement**

3.1 The Contractor acknowledges that the estimated quantities on the required hardware and/or software specified in the Brief and Trade-in Items specified in the relevant Schedule(s) are for reference only and are not figures to which the Government binds itself to adhere. The actual requirements may vary depending on the actual needs of the Government based on the Orders placed. Orders may be placed within the period specified in the Brief under the heading "Price Validity" counting from the Date of Acceptance of Proposal. Where no information is provided as aforesaid in the Brief, the period shall be deemed as a six (6) months' period from the Date of Acceptance of Proposal.

3.2 The unit prices specified in the relevant Schedule(s) shall remain unchanged throughout the period specified in Clause 3.1 above.

3.3 The Contractor acknowledges that nothing in the Contract shall preclude the Government from procuring any hardware or software (whether within and outside the coverage of the Contract) from any other person.

### **4. Conduct of the Work**

4.1 The Contractor shall in accordance with the time schedule stipulated in the Contract carry out the Work in a timely and professional manner with all due and reasonable diligence and despatch and shall conform to the standards generally observed in the industry for similar service.

4.2 The Contractor shall, through the Government B/D Representative, keep the Government informed of all matters related to the Work within the actual or constructive knowledge of the Contractor and shall answer all enquiries received from the Government B/D Representative.

4.3 The Contractor shall attend all meetings convened by the Government B/D Representative to which it may be summoned and shall advise and assist the Government on all matters relating to the duties and obligations of the Contractor under this Contract.

4.4 All Government data, equipment and all other materials (tangible or intangible) supplied to the Contractor by the Government for the purpose of this Contract shall remain the property of the Government and shall be

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returned in proper and functional conditions on or before the Completion Date or such later time as the Government B/D Representative may agree.

### **5. Implementation Plan**

- 5.1 Subject to Clause 5.2 below, the Contractor shall perform its obligations under the Contract in accordance with the Implementation Plan in respect of each Order to be issued within the applicable period specified in Clause 3.1 of the Conditions of Contract and shall complete each activity by the date specified in the Implementation Plan in respect of each such Order. All time stipulations in the Implementation Plan shall be of the essence for this Contract.
- 5.2 The Government shall be entitled to postpone any of the completion dates for the respective activities specified in the Implementation Plan in respect of any one or more Order(s) provided the Government will give the Contractor not less than fourteen (14) days' written notice prior to the date to be postponed. The remaining dates of the Implementation Plan shall remain in full force and effect unless the Government shall otherwise determine or unless the postponement is of a material length and the Contractor provides justifications to the satisfaction of the Government that there shall be a corresponding postponement of the remaining dates.
- 5.3 Any postponement or change of the Implementation Plan pursuant to this Clause 5 or other applicable provisions of this Contract by the Government shall not:
- (i) oblige the Government to pay any additional remuneration or compensation to the Contractor;
  - (ii) release the Contractor from any of its obligations or liabilities or give rise to any waiver or estoppel in relation to any of its obligations or liabilities; or
  - (iii) give rise to any other obligation or liability on the part of the Government.

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- 6. Location Preparation (applicable to procurement of Add-on Hardware only)**
- 6.1 The Contractor shall supply to the Government Hardware which does not require alteration of the environmental and operational conditions including electricity supply at any of the Locations as specified in the last column of Schedule 4 of the Contract Schedules.
- 6.2 Subject to Clause 6.1 above, at least two (2) weeks before the delivery of a batch of the Add-on Hardware, the Contractor shall provide such information and assistance as may be necessary to enable the Government to plan and to prepare the Location(s) for the installation of the Add-on Hardware.
- 6.3 The Contractor shall, in the course of the execution of the Work, keep the Location in clean, safe and tidy conditions.

### **7. Delivery of the Add-on Hardware and Add-on Software**

- 7.1 In respect of each batch of Add-on Hardware and/or Add-on Software, the Contractor shall deliver the batch to the Location as specified in the Order for that batch for conducting Installation Tests at its own costs and expenses on the Delivery Date.
- 7.2 Without prejudice to the generality of Clause 5.2 of the Conditions of Contract, the Government B/D Representative shall be entitled, by giving no less than fourteen (14) days' prior written notice to the Contractor, to postpone delivery to the Location or installation to a date or within such period to be specified in the notice, of any or all of the Add-on Hardware or Add-on Software beyond the original Delivery Date or beyond the Installation Period (as the case may be). All other dates specified in the Implementation Plan shall remain unchanged.
- 7.3 The Contractor shall deliver each batch of Add-on Hardware and/or Add-on Software to the Government with their latest patches. The Contractor shall certify that it has performed this action before the Government will issue any Acceptance Certificate in respect of that batch of Add-on Hardware and/or Add-on Software. The Contractor shall submit a "Certificate of Product Patching" ("the Certificate") to the Government in the format of the proforma of Certificate in Annex A to Conditions of Contract at the same time when the Add-on Hardware and/or Add-on Software is delivered to the Government. The Certificate shall be signed and certified by the Contractor Representative and shall list all the updates that have been applied as well as any applicable updates that have not been applied with reasons. If in the reasonable opinion of the Government B/D Representative such latter updates are required to be applied, the Contractor shall apply the updates within a period specified by the Government B/D Representative.
- 7.4 In relation to the Add-on Hardware that is governed by the Product Eco-responsibility Ordinance (Chapter 603 of the Laws of Hong Kong), the Contractor shall provide (i) the appropriate recycling label, issued by the Environmental Protection Department, for each of such delivered Add-on Hardware; and (ii) a receipt with prescribed wording about the recycling levies.

### **8. Installation of the Add-on Hardware and Add-on Software**

- 8.1 In relation to each batch of Add-on Hardware and/or Add-on Software, the Contractor shall install and configure such batch at the Location as specified in the Order to which the batch relates within the Installation

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Period. The Contractor shall configure, install or integrate or connect these Items together, and/or with all or any of the Existing Hardware and/or Existing Software as whole operating unit for completing the installation as specified in the Brief or in any subsequent direction of the Government B/D Representative before the installation is deemed complete.

- 8.2 It may be necessary for the Contractor to remove and disconnect Existing Hardware at the Location in order to carry out the installation of the Add-on Hardware and/or Add-on Software. The Government B/D Representative shall have the right to require the removal or disconnection of the Government's equipment and installation of Add-on Hardware to be carried out in the off-peak hours or on a Saturday or Sunday or a public holiday. No extra charge shall be payable by the Government for performing the work during the aforesaid time or days.
- 8.3 The Contractor shall cause and ensure proper connection of and between any part of the Add-on Hardware and/or Add-on Software and/or any part of Existing Hardware and/or Existing Software as is appropriate for the operation of the System.
- 8.4 The Contractor shall remove all packing cases and other containers in which the Add-on Hardware and/or Add-on Software are delivered.
- 8.5 The Contractor shall provide such assistance, instruments, machines, expertise, labour and other facilities as may be necessary to enable the Government to inspect and test any of the Add-on Hardware and/or Add-on Software.

### **9. Installation Tests**

- 9.1 Prior to the carrying out of the Installation Tests for each batch of Add-on Hardware and/or Add-on Software, the Contractor shall submit the specifications of such Installation Tests including test scope, test procedures, mechanism for tracking defects and reporting for approval by the Government B/D Representative. If in the opinion of the Government B/D Representative such specifications do not provide sufficient details to test all the functions and facilities of the Add-on Hardware and/or Add-on Software as covered by that batch, the Contractor shall make any reasonable amendments to such specifications to the satisfaction of the Government.
- 9.2 In respect of each batch of Add-on Hardware and/or Add-on Software as specified in an Order, within the period as specified in the Implementation



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Plan for such batch, the Contractor, in the presence of the Government B/D Representative, shall conduct the Installation Tests in compliance with the requirements of the Contract and the specifications as approved by the Government pursuant to Clause 9.1 above for each unit of each Item covered by such batch of Add-on Hardware and/or Add-on Software to prove to the Government that each such unit and every part thereof are operating in full and proper working order. The Contractor shall within two (2) weeks (or such shorter period as specified in the Implementation Plan for a batch) supply to the Government the results of the Installation Tests and certify in writing whether all units of all Items covered by a batch of Add-on Hardware or Add-on Software have passed the same.

- 9.3 If any quantity of any Item of Add-on Hardware or Add-on Software covered by a batch of Add-on Hardware and/or Add-on Software fails the Installation Tests within two (2) weeks from the date of its first submission to the Installation Tests (“faulty unit(s)” and such batch of Add-on Hardware and/or Add-on Software to which the faulty unit(s) belong is a “faulty batch”), without prejudice to other rights and claims of the Government, the Government may exercise any of the options as specified in Clause 11.1 and/or Clause 11.2 of the Conditions of Contract.

### **10. System Acceptance Tests**

- 10.1 In relation to each batch of Add-on Hardware or Add-on Software which has passed the Installation Tests, each of the whole operating unit(s) covered by that batch of Add-on Hardware and/or Add-on Software (and where applicable any earlier batch(es) depending on the Overall Specifications and the relevant approved test plan) (alternatively known as “System” ) shall be submitted to the System Acceptance Tests consisting of the following Function Tests and the Reliability Tests. The Function Tests shall be conducted by the Contractor within the period as specified in the Implementation Plan for such batch.

(i) **Function Tests**

- (1) Following the successful completion of Installation Tests and where applicable user data migration in respect of a batch of Add-on Hardware and/or Add-on Software at a Location, the Contractor, in the presence of the Government B/D Representative, shall perform the Function Tests in accordance with the Function Tests plan to be approved by the Government in advance to assess whether the System and every part of the System is operating in accordance with

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the Overall Specifications and the Performance Criteria and such other criteria as the Government B/D Representative may stipulate in the Brief and/or the approved test plan (collectively, “Function Test Criteria”). Unless agreed by the Government B/D Representative otherwise, the Contractor shall within two (2) weeks (or such shorter period as specified in the Implementation Plan for a batch) supply to the Government the results of the Function Tests and certify in writing whether the Function Test Criteria is met.

- (2) If the Function Test Criteria is not met, the Contractor shall rectify such failure forthwith and repeat the tests on the same basis.
- (3) If the System or any part of the System cannot pass the Function Tests by meeting the Function Test Criteria after two (2) weeks (or such shorter period as specified in the Implementation Plan) from the date on which it was first submitted to the tests specified in Clause 10.1(i)(1) above (and each batch of Add-on Hardware and/or Add-on Software comprised in the System is a “faulty batch”), without prejudice to the other rights and claims of the Government, the Government may exercise any of the options as specified in Clause 11.1 and/or Clause 11.2 of the Conditions of Contract.

### (ii) Reliability Tests

- (1) Upon successful completion of the Function Tests in respect the System, the Government shall carry out the Reliability Tests to test whether the System is in conformity with the Overall Specifications, the Reliability Levels and the Performance Criteria for a period of four (4) consecutive weeks. The Government shall carry out its tests by putting the System to full operation in production mode.
- (2) If the System or any part thereof fails to conform fully to the Overall Specifications, the Reliability Levels and the Performance Criteria in the Reliability Tests, then such tests shall be repeated on a week to week basis and on the same terms and conditions until full conformity with the Overall Specifications, the Reliability Levels and the Performance

Criteria are achieved for four (4) consecutive weeks.

- (3) If such repeated tests demonstrate that the System or any part thereof is not in conformity with the Overall Specifications, the Reliability Levels and the Performance Criteria after six (6) weeks from the date on which the System was first submitted to the tests specified in Clause 10.1(ii)(1) above (and each batch of Add-on Hardware and/or Add-on Software comprised in the System is a “faulty batch”), without prejudice to the other rights and claims of the Government, the Government may exercise any of the options as specified in Clause 11.1 and/or Clause 11.2 of the Conditions of Contract.

10.2 From the date of commencement of the System Acceptance Tests, the Government shall be entitled to use each batch of Add-on Hardware and/or Add-on Software subject to such Tests at no cost and the Contractor shall provide free of charge all such maintenance services as may be necessary to maintain the batch in full working order until the batch is accepted by the Government B/D Representative through the issuance of the Acceptance Certificate. However, the period of such maintenance services shall not be treated as part of the Warranty Period.

### **11. Consequences for Failing the Installation Tests or System Acceptance Tests**

11.1 In the event of any faulty batch (whether by failing the Installation Tests or any part of System Acceptance Tests (“failed tests”)), without prejudice to the other rights and claims of the Government, the Government may (but is not obliged to) at its sole option by a written notice elect to exercise all or any one of the following rights either at the same time or one after the other :

- (i) to require the Contractor to provide such replacement and/or additional hardware and/or software within seven (7) days or such longer period as the Government may allow counting from the date of the Government’s written notice containing such request to enable the failed tests to be passed. In the event that notwithstanding such replacement and/or additional hardware or software, the failed tests still cannot be passed, the Government shall be entitled to proceed in accordance with Clause 11.1(ii) or Clause 11.1(iii) below by a further written notice to this effect;

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- (ii) to accept the faulty batch of Add-on Hardware and/or Add-on Software subject to an abatement of the Price for such batch as well as all subsequent batches not yet accepted, such abatement to be such amount as, taking into account the circumstances, is reasonable. In the absence of written agreement between the parties as to abatement within two (2) weeks after the date of such notice, the Government shall be entitled to reject the entire faulty batch of Add-on Hardware and/or Add-on Software or any part thereof in accordance with Clause 11.1(iii) below by a further written notice to this effect; and/or
- (iii) to reject the entire faulty batch of Add-on Hardware and/or Add-on Software or any part thereof as not being in conformity with the Contract in which event the Contractor shall forthwith refund to the Government all sums previously paid to the Contractor in respect of such batch (or in respect of those quantities of Items within that batch which are to be rejected) (if any) plus interest to accrue from the date of original payment to the date of actual refund (both dates inclusive) at the rate as specified in Clause 19.9.

11.2 In addition to the options as specified in Clause 11.1 above, notwithstanding anything in the Contract to the contrary, by reason of any faulty unit(s) or faulty batch failing to pass the failed tests, regardless of the option which may be exercised by the Government under Clause 11.1 above, the Government may at its election, refrain from issuing any Order for any of the Add-on Hardware and/or Add-on Software under the Contract. Any Add-on Hardware and/or Add-on Software (or any part thereof) covered by an Order which has been issued but has not been accepted by the Government under Clause 13 of the Conditions of Contract may also be rejected. The Contractor shall forthwith refund to the Government all sums paid to the Contractor in respect of all rejected Goods.

11.3 For any of the Installation Tests and Function Tests to be conducted in relation to each batch of Add-on Hardware and/or Add-on Software, they shall not be deemed to have been passed unless the Contractor has certified in the report for each of these tests that they have been passed and that such report has been verified and accepted by the Government in writing. In the case of the Reliability Tests, they shall not be deemed to have been passed unless the Government has confirmed the same. The Government will not accept the reports (or give confirmation in the case of the Reliability Tests) if insufficient details have been provided or are available to prove that the relevant tests have been passed.

### 12. Unit Acceptance Tests

12.1 For any unit of Add-on Hardware or Add-on Software which is delivered or installed subsequent to the System Acceptance Tests, the Contractor shall initially perform its Installation Tests in accordance with Clause 9 of the Conditions of Contract. On successful completion of the Installation Tests, the unit will be put into operation together with the System. If the unit fails to achieve in four (4) consecutive weeks a unit serviceability level of at least 99.5% (“Unit Acceptance Tests”), the tests will be repeated on a week to week basis until a unit serviceability level of at least 99.5% is achieved for four (4) consecutive weeks. The unit serviceability level is defined as:

$$\frac{A - B}{A}$$

where A = Total switched-on time

B = Total unit downtime (including unit repair time)

12.2 The Government shall, upon receipt of any of the Add-on Software subsequent to the System Acceptance Tests, within four (4) consecutive weeks operate the said software to determine whether:

- (i) it complies with the Overall Specifications; and
- (ii) it is capable of operating on a repetitive basis without failure on a variety of data which the Government may provide.

The said software shall be deemed to be accepted if it passes all the acceptance criteria set out herein.

12.3 If such unit fails such test after four (4) weeks from the date on which such unit is put to its Unit Acceptance Test or fails to conform fully to the Overall Specifications including the specifications published by the manufacturer or committed by the Contractor for such unit or is not compatible with the System, without prejudice to the Government’s other rights and remedies, the Government may (but is not obliged to) at its sole option by a written notice elect to exercise all or any one of the following rights either at the same time or one after the other :

- (i) to require the Contractor to provide such replacement and/or additional hardware and/or software as will enable such unit to pass the Unit Acceptance Tests. In the event that such replacement and/or additional hardware fails to enable such unit

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to pass the Unit Acceptance Tests, then the Government shall be entitled to proceed under Clause 12.3(ii) or Clause 12.3(iii) below; or

- (ii) to accept such unit subject to an abatement of its price, such abatement to be in an amount which, taking into account the circumstances, is reasonable. In the absence of written agreement as to abatement within two (2) weeks after the date of such notice the Government shall be entitled to reject such unit in accordance with Clause 12.3(iii) below; or
- (iii) to reject such unit as not being in conformity with the Contract in which event the Contractor shall (without prejudice to the Government's other rights and remedies) forthwith refund to the Government all sums previously paid to the Contractor in respect of such unit plus interest to accrue from the date of original payment to the date of actual refund (both dates inclusive) at the rate as specified in Clause 19.10. Upon rejection as aforesaid the risk in such unit shall forthwith pass to the Contractor.

### 13. Acceptance Certificate

13.1 In relation to a batch of Add-on Hardware and/or Add-on Software, upon all quantities of Item covered by that batch passing the Installation Tests and the System incorporating that batch of Add-on Hardware and/or Add-on Software passing the System Acceptance Tests as certified by the Contractor in the reports for such tests which reports have been verified and accepted by the Government, the Government will, within two (2) weeks thereafter, either:

- (i) accept the batch by issuing an Acceptance Certificate to the Contractor (whether with or without any qualification concerning further deficiencies or non-compliance to be rectified or any other outstanding obligations under the Contract which are due to be performed; and if there are such qualifications, the Contractor shall ensure that the deficiencies or non-compliance are rectified and outstanding obligations are performed by the date indicated in the Acceptance Certificate); or
- (ii) give instructions in writing to the Contractor specifying all the work which is required to be done by the Contractor under the Contract before such Acceptance Certificate can be issued, in which case the Contractor shall not make any further request for

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an Acceptance Certificate until such work is completed to the Government B/D Representative's satisfaction.

### **14. Delays**

- 14.1 In relation to a batch of Add-on Hardware and/or Add-on Software, the Contractor shall provide the System incorporating that batch in Ready for Use condition on or before the Completion Date applicable to such batch.
- 14.2 In relation to a batch of Add-on Hardware and/or Add-on Software, if the Contractor fails to provide the System or any part thereof incorporating that batch in Ready for Use condition by the applicable Completion Date (whether due to any of the Installation Tests or Function Tests not having been successfully completed, or the aforesaid System failing to pass the Reliability Tests, or due to failure to deliver the entire quantity covered by a batch of Add-on Hardware and/or Add-on Software to the requested Locations) (and all quantities of all Items covered by the batch is known as the "delayed batch"), the Contractor shall pay the Government as and by way of liquidated damages and not as a penalty for any losses or damage sustained by the Government resulting from delay during the period from the applicable Completion Date to the date on which the Contractor provides the entire delayed batch Ready for Use the sum of such percentage of the Price for the entire delayed batch as specified in the Brief for each day or part of the day of such delay up to a total maximum of 15% of the Price for such delayed batch. Subject to the provisions of Clause 14.3 below the payment of such sums shall be in full satisfaction of the Contractor's liability for such delay only. In the event the delayed batch has never become Ready for Use, the liquidated damages provision under this Clause 14 is not applicable, and the Government will claim from the Contractor under the indemnity in Clause 23.2 of the Conditions of Contract arising from such failure and in the event of any termination, the termination consequences specified in Clause 26.1 of this document shall also apply. The payment of liquidated damages shall not relieve the Contractor from its obligation to provide the System Ready for Use or from any other liability or obligation under the Contract.
- 14.3 Notwithstanding Clause 14.2 above, in the event that there is certain quantity within a delayed batch of Add-on Hardware and/or Add-on Software which does become Ready for Use by the Completion Date (including by passing all of the Installation Tests and Unit Acceptance Tests), and provided further that such quantity can be installed, used and operated independently from the other quantities of the delayed batch

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which has not become Ready for Use by the Completion Date (whether it is of the same Item), the Government may at its discretion abstain from charging liquidated damages in respect of such quantity under Clause 14.2 above.

- 14.4 If the Contractor fails to provide the System to incorporate a delayed batch of Add-on Hardware and/or Add-on Software in Ready for Use condition for more than 30 days after the applicable Completion Date as specified in the Implementation Plan in respect of that delayed batch (regardless of whether or not any of the rights specified in Clause 11.1 has or has not been exercised), then notwithstanding anything else contained in this Contract but without prejudice to all other rights and claims of the Government, the Government B/D Representative shall be entitled to reject the delayed batch of Add-on Hardware and/or Add-on Software provided that if there is any quantity not chargeable to liquidated damages under the circumstances specified in Clause 14.3 above, the Government may either choose to accept or reject also such quantity; upon the Government exercising this right of rejection, the Contractor shall forthwith refund to the Government all sums previously paid to the Contractor in respect of the entire delayed batch (excluding those quantities which have been accepted (if any)) plus interest to accrue from the date of original payment to the date of actual refund (both dates inclusive) at the rate as specified in Clause 19.10. In addition, the Government may also exercise the same right under Clause 11.2 of the Conditions of Contract.
- 14.5 The Contractor shall complete the Support Services on or before the Completion Date stipulated in the Implementation Plan (if any).
- 14.6 Where the Contractor fails to complete the Support Services by the Completion Date (“delayed Support Services”), all provisions set out in this Clause 14 shall equally apply to such delayed Support Services, and references to “delayed batch” shall mean “delayed Support Services”.

### **15. Maintenance Services**

- 15.1 Throughout the Warranty Period, the Contractor shall provide the Maintenance Services to keep each unit of each Item covered by each batch of Add-on Hardware and/or Add-on Software in proper order in accordance with the Overall Specifications, Performance Criteria and Reliability Levels on the terms and conditions as set out in the Contract including this Clause 15, Schedule 11 of the Contract Schedules and the Reference Maintenance Service Requirements for IT Products. After expiry of the Warranty Period, throughout the remaining Maintenance



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Period in respect of a batch of Add-on Hardware and/or Add-on Software, to the extent there are Maintenance Items covered by that batch, the Contractor shall do the same for each Maintenance Item covered by such batch. After the Warranty Period, references to a batch of Add-on Hardware and/or Software shall be construed to mean such Maintenance Items only.

- 15.2 The Contractor shall provide the preventive maintenance and the remedial maintenance on-site at the relevant Location at which the Add-on Hardware and/or Add-on Software are located.
- 15.3 In respect of each batch of Add-on Hardware and/or Add-on Software, the Maintenance Services shall be provided free of charge to the Government throughout the Warranty Period as applicable to that batch. Thereafter, for each Maintenance Item (except for Add-on Software (Free from Annual Maintenance Charge), the Annual Maintenance Charges payable for the Maintenance Services are specified in the Relevant Schedule(s)).
- 15.4 The Maintenance Items covered by a batch of Add-on Hardware and/or Add-on Software which will continue to receive Maintenance Services after the expiry of the Warranty Period shall be specified in the Brief, but the Government B/D Representative reserves the power to make further changes in the Proposal Acceptance, or in the Order for such batch, or any time one (1) month prior to the expiry of the Warranty Period for such batch. Where the updates for an Add-on Software can be provided free of charge from the manufacturer, such Add-on Software shall be treated as a Maintenance Item which is Add-on Software (Free from Annual Maintenance Charge) regardless of whether or not there is any such specification in the Brief.
- 15.5 Without prejudice to the right of the Government to terminate the Contract early or its right under Clause 26.1 or Clause 26.2 of the Conditions of Contract, the Maintenance Services for a Maintenance Item in each batch of Add-on Hardware and/or Add-on Software shall continue throughout the Maintenance Period after the Warranty Period unless the Government gives the Contractor a notice of not less than one (1) month to the effect that the Maintenance Services in relation to such Maintenance Item as specified in the notice shall be terminated.
- 15.6 The Government shall have the option to extend the Maintenance Period for further period(s) of not more than twelve (12) months in aggregate. The Government shall be entitled to exercise such option, not less than three (3) months prior to the expiry of the Maintenance Period,

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by giving the Contractor a written notice to that effect specifying in such notice the period of extension whereupon the Maintenance Period shall be deemed to be so extended on and subject to the same terms and conditions set out in the Contract.

- 15.7 If the initial period of extension is less than twelve (12) months, the Government shall have the option (without limitation on the number of times that this option may be exercised), on giving the Contractor not less than one (1) months' notice prior to the expiry of the Maintenance Period as last extended, to make further extensions to the Maintenance Period subject always to the aggregate period of extension specified in Clause 15.6 above.
- 15.8 The Government is entitled from time to time to relocate a batch of Add-on Hardware and/or Add-on Software or any part thereof. In such case, the successful Contractor shall remain responsible for the Maintenance Services irrespective of the party(ies) performing such relocation. There shall be no increase of the Annual Maintenance Charge due to any relocation.

### **16. Reliability Levels**

- 16.1 In respect of each month of the remainder of the Contract Period after the commencement of the Maintenance Period for the first (or only as the case may be) batch of Add-on Hardware and/or Add-on Software, ("Given Period"), the Contractor warrants that the System incorporating all batch(es) of the Add-on Hardware and Software as and when they have been accepted at the beginning of that Given Period (alternatively referred to as "all accepted batches") shall achieve the Reliability Levels as specified in Schedule 8 of Contract Schedules. For the avoidance of doubt, the System incorporating all accepted batches do not include hardware and/or software supplied by another GITP provider appointed under the same Brief.
- 16.2 The Committed Serviceability Level and the Committed MTBF shall be measured in accordance with the procedure laid down in Schedule 8 of Contract Schedules.
- 16.3 In the event that the System incorporating all accepted batches cannot achieve the Committed Serviceability Level during that Given Period, the Contractor shall pay to the Government liquidated damages for such batches as follows:

$$(A - B) \times (C + D)$$

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$$\frac{\quad}{M} + (A - B) \times (E + F)$$

- Where A = the Committed Serviceability level
- B = the actual serviceability level
- C = the Price of all of the Add-on Hardware in all accepted batches
- D = the Price of all of the Add-on Software in all accepted batches
- E = the aggregate Annual Maintenance Charges for all of the Add-on Hardware in all accepted batches divided by 12
- F = the aggregate Annual Maintenance Charges for all of the Add-on Software in all accepted batches divided by 12
- M = sixty (60) or the number of months comprised in the Maintenance Period, whichever is higher

- 16.4 In the event that the System incorporating all accepted batches cannot achieve the Committed MTBF in respect of a Given Period, the Contractor shall pay to the Government liquidated damages for such batches as follows:

$$\frac{(A - B) \times (C + D)}{24 \times 30 \times M} + \frac{(A - B) \times (E + F)}{24 \times 30}$$

- Where A = the Committed MTBF
- B = the actual MTBF
- C = the Price of all of the Add-on Hardware in all accepted batches
- D = the Price of all of the Add-on Software in all accepted batches

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E = the aggregate Annual Maintenance Charges for all of the Add-on Hardware in all accepted batches divided by 12

F = the aggregate Annual Maintenance Charges for all of the Add-on Software in all accepted batches divided by 12

M = sixty (60) or the number of months comprised in the Maintenance Period, whichever is higher

- 16.5 The Government B/D Representative shall notify the Contractor as soon as reasonably practicable in the event that any unit of the Add-on Hardware within a batch becomes inoperative. Without prejudice to any of the Government's other rights and remedies, if any unit of the Add-on Hardware within a batch fails to operate for more than 24 consecutive hours, the Government shall be entitled to a credit against the Annual Maintenance Charge otherwise payable in respect of such unit for each and every hour or part of an hour of failure beyond the 24th consecutive hour. Such credit shall be assessed as follows:

$$\frac{A}{24 \times 30 \times M} + \frac{B}{24 \times 30}$$

Where A = the Price of such unit

B = the Annual Maintenance Charge of such unit divided by 12

M = sixty (60) or the number of months comprised in the Maintenance Period, whichever is higher

- 16.6 In the event of any corruption to data, without prejudice to the other rights and claims of the Government, the Contractor shall assist the Government to recreate the corrupted files and to reprocess the necessary jobs as the Government may determine and compensate the Government for the cost incurred in so doing.
- 16.7 If at any time during the Contract Period in relation to the System incorporating all accepted batches, any one or more of the non-compliance thresholds specified in the column titled "Threshold for Early

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Termination of the Contract” in the table below have been reached, without prejudice to its other rights and claims under the Contract or at law, the Government shall be entitled to terminate the Contract in accordance with Clause 26.1(v) of the Conditions of Contract:

<b>Non-compliance Event</b>	<b>Threshold for Early Termination of the Contract</b>
(a) (applicable to Category A or B or C) Non-compliance by the System incorporating all accepted batches with the Committed Serviceability Level as specified in Schedule 8 of Contract Schedules in respect of a Given Period	Failure by the System incorporating all accepted batches to achieve the Committed Serviceability Level as specified in Schedule 8 of Contract Schedules for three (3) consecutive Given Periods
(b) (applicable to Category A or B only) Non-compliance by the System incorporating all accepted batches with the Committed MTBF in respect of a Given Period.	Failure by the System incorporating all accepted batches to achieve the Committed MTBF as specified in Schedule 8 of Contract Schedules for three (3) consecutive Given Periods.

16.8 Without prejudice to the Government’s other rights and claims (including the right to terminate the Contract), the Government may withhold payment of the charges for any material or persistent non-compliance with any of the terms and conditions of the Contract (including without limitation the Overall Specifications and the Reliability Levels), until and unless all actions and measures have been taken to remedy the non-compliance to the absolute satisfaction of the Government.

### **17. Warranties**

17.1 The Contractor hereby warrants, represents and undertakes to the Government that:

- (i) it has the full capacity, power and authority and all necessary licences, permits and consents as required by all applicable laws and regulations to enter into the Contract and to perform the Work and all of its other obligations under the Contract in accordance with the terms and conditions of the Contract and any other transactions to be entered into, or effected by it under the Contract including the grant of the Licences;

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- (ii) the electronic signature of the offer to be bound submitted on the e-Procurement System on behalf of the Contractor has been duly authorised by the Contractor in accordance with the laws of the place of its incorporation;
- (iii) the Contract constitutes valid, binding and enforceable obligations of the Contractor enforceable in accordance with their terms;
- (iv) the entry into the Contract and the performance by the Contractor of its obligations under it including the performance of the Services will not conflict or result in breach of:
  - (1) any provision of the Memorandum and Articles of Association, or other equivalent constitutional documents governing the Contractor;
  - (2) any contract or arrangement to which the Contractor is a party or by which the Contractor is bound;
  - (3) any order, judgment or decree of any court or government agency to which the Contractor is a party or by which the Contractor is bound; or
  - (4) any applicable laws or regulations;
- (v) all statements, representations and warranties in the Contractor's Proposal and from time to time made by the Contractor to the Government (via the Government Representative or other person or means) throughout the continuance of the Contract are true, complete and accurate;
- (vi) the Contractor and each one of the Contractor Personnel shall have all the necessary skills, qualifications, and experience to perform the Work which may from time to time be awarded to it;
- (vii) the Work shall be performed and completed in an impartial, timely and diligent manner, and the Contractor, and each one of the Contractor Personnel, shall use all proper, professional and reasonable skill, experience, care and diligence in the performance

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- of the Work and the discharge of all its duties and obligations under the Contract as may be expected from a person who is an expert in providing, or assisting in providing, services of a kind similar to the Contract;
- (viii) the Work shall be performed and provided in compliance with all applicable laws and regulations;
  - (ix) when performing the Work, it shall comply with such instructions or directions as the Government Representative may give from time to time;
  - (x) the Work shall conform fully to all requirements of the Contract;
  - (xi) the Contractor and all members of the Contractor Personnel do not and will not infringe any Intellectual Property Rights or any other rights of any person in performing the Work;
  - (xii) the Government obtains good and marketable title to each batch of Add-on Hardware and/or Add-on Software and the Deliverables (collectively, “Acquired Property”) with absolute legal and beneficial entitlement;
  - (xiii) there is no option, right to acquire, mortgage, charge, pledge, lien, hire purchase, or other form of security or encumbrance on, over or affecting the Acquired Property; and there is no agreement or commitment to give or create any of the foregoing and no claim has been made by any person to be entitled to any of the foregoing;
  - (xiv) each batch of Add-on Hardware and/or Add-on Software and their Documentation are free from defects in design, material, workmanship and installation; all such Items have been procured directly from the manufacturer/distributors, and at the time of delivery to the Location, they are unopened and retain their original packaging when leaving the manufacturer;
  - (xv) each batch of Add-on Hardware and/or Add-on Software and their Documentation and any location and network for the System provided by the Contractor (if required) are of merchantable

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quality and they shall be fit for the purposes for which they are intended under the Contract;

- (xvi) the System incorporating all accepted batches provides all the facilities and functions set out in the Overall Specifications;
- (xvii) the Documentation provides adequate instructions to enable the Government to install, set-up, test, use, operate, support and maintain the System either on its own or through a third party contractor;
- (xviii) the System incorporating all accepted batches shall conform fully to the Overall Specifications, the Reliability Levels and the Performance Criteria;
- (xix) in respect of any software and other materials supplied or used by the Contractor, its employees, agents or sub-contractors in the performance of this Contract and in respect of which any Intellectual Property Right is vested in a third party, prior to the use of such software and other materials and/or their incorporation into the Deliverables, the Contractor shall have obtained from such third party Intellectual Property Rights owner the valid and subsisting grant of all necessary consents, licences, approvals and agreements for itself and its authorised users and for the Government, its authorised users, assigns and successors-in-title to use such software and materials for all purposes and in the manner provided for or contemplated by this Contract. The costs of the above consents, licences, approvals and agreements shall be borne by the Contractor;
- (xx) none of the Add-on Hardware or Add-on Software, including any future update, shall contain any function that would activate under any condition, including pre-programmed time or specific set of conditions, to interfere with the running of the Add-on Hardware or Add-on Software;
- (xxi) the Contractor has the right and authority to sell each batch of Add-on Hardware and/or Add-on Software and their Documentation and to grant to the Government, its authorised



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users, assigns and successors-in-title the Licence to use all Add-on Software and all Bundled Software and the right and authority to provide Maintenance Services for the Items; and that such Items are free from any third party claims, charges and encumbrances of whatsoever nature;

- (xxii) all consents, approvals, licences and certificates required by any laws and regulations have been duly obtained prior to the commencement of the Contract Period for the manufacture, sale, supply and provision of the Items; and the purchase or use of the Items by the Government will not contravene any applicable laws and regulations;
  - (xxiii) all authorisations, approvals, consents, licences, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract including the performance of the Services have been duly and unconditionally obtained prior to the commencement of the Contract Period and are in full force and effect; and
  - (xxiv) all Goods when delivered to the Location(s) shall comply with all applicable laws and regulations applicable as at the date of delivery; and all Support Services shall comply with all applicable laws and regulations applicable as at the date of performance.
- 17.2 The warranties, representations and undertakings contained in Clause 17.1 above and those contained in Clause 20.1 of the Conditions of Contract (collectively "Warranties") shall be true, accurate and complete without limitation in time, save that in the case of any warranty expressed to be effective throughout a specified period, it shall be true on each day of that specified period as if it is repeated on each such day.
- 17.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty and, except where expressly stated otherwise, shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.
- 17.4 The Contractor accepts and acknowledges that the Government is entering into the Contract strictly in reliance upon each of the Warranties

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notwithstanding any knowledge (actual or constructive) of the Government or investigations which the Government or its agent or advisor may have made.

- 17.5 If the Contractor receives written notice from the Government of any breach of any of the Warranties, the Contractor shall, without prejudice to any other rights and claims (including the claims under the indemnities in Clauses 23 and 24), the Government may have, at its own expense and as soon as possible after receiving such notice, take all such remedial action to the satisfaction of the Government within such time period as stipulated by the Government in the written notice to ensure that the breaches of the Warranties are remedied to the satisfaction of the Government.

### **18. Compliance with Overall Specifications and all applicable Laws and Regulations**

- 18.1 The Contractor shall perform the obligations set out in and comply with the Overall Specifications. In addition, in performing the Contract, the Contractor shall comply with, and shall ensure that the Items will comply with:
- (i) all applicable laws and regulations of Hong Kong;
  - (ii) the laws and regulations of the place(s) in which the Goods are manufactured and exported to Hong Kong; and
  - (iii) all the latest orders, regulations or other instruments in respect of environmental protection issued by the Government.

### **19. Payment Terms**

- 19.1 The Price for a batch of Add-on Hardware and/or Add-on Software shall only become payable to the Contractor after the issuance of the Acceptance Certificate in respect of such batch.
- 19.2 The Annual Maintenance Charges in respect of the Maintenance Items at the charging rates as specified in the Relevant Schedule(s) shall be payable quarterly in arrears commencing from the expiry of the Warranty Period. The Government shall not be liable for any charge for the Maintenance Services during the Warranty Period. This is except for the licence fee for the subscription to any Add-on Software on an annual basis (if any) which is included in the Annual Maintenance Charge for that

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Add-on Software. Such licence fee shall be payable in advance and shall equally be payable during the Warranty Period. For Add-on Software (Free from Annual Maintenance Charge), any quotation of Annual Maintenance Charge in the Relevant Schedule shall be disregarded and shall not be payable (except for any licence fee for the subscription of such Add-on Software on an annual basis as aforesaid).

- 19.3 The charges for the Support Services at the Unit Charging Rates specified in Schedule 9 of Contract Schedules shall only be payable upon completion of the Support Services by the Contractor and the delivery of all Deliverables which are stated to be required under the Contract, in both cases to the satisfaction of the Government B/D Representative as confirmed in writing.
- 19.4 Notwithstanding anything herein to the contrary, any payment payable by the Government hereunder will be paid within thirty (30) days after any such payment is payable and the receipt and acceptance by the Government of the Contractor's invoice thereof, whichever is the later.
- 19.5 To enable speedy payment to be made, all invoices and correspondence regarding payment for the Items accepted should be forwarded by the Contractor to the correspondence address specified in the Brief unless instructed otherwise by the Government B/D Representative. The Government shall not be held responsible for any delay in payment for the Items delivered and accepted under this Contract to the Contractor if any invoices and correspondence sent by the Contractor are not properly addressed and delivered.
- 19.6 Unless otherwise specified by the Contractor and agreed by the Government, payment will be made in Hong Kong dollars. If the price quoted is in U.S. dollars, the conversion rate of the currency to Hong Kong dollars will be based on the official opening selling rate quoted by the Hong Kong Association of Banks ruling on the date of payment by the Government.
- 19.7 All Unit Prices quoted in the Relevant Schedules are fixed. There shall be no adjustment to any amount payable under the Contract whether due to CPI fluctuation or foreign market exchange fluctuation otherwise.
- 19.8 In the event that the Contractor fails to pay any sum of money on the date it falls due or upon demand by the Government under the Contract, for interest before any judgment debt which may be awarded by the court or by an arbitrator, it shall pay interest on such sum to accrue from the due date up to the date of actual payment in full (or where applicable up to the

date of award of the judgment debt) at the rate of one per cent (1%) above the rate per annum which shall be a simple average of the rates per annum announced by the note-issuing banks of Hong Kong from time to time to be its prime lending rate for Hong Kong dollars. Such interest shall accrue on a daily basis in year of 365 days. For interest on any judgment debt (if applicable), it shall be at the aforesaid rate or at such rate as may be determined from time to time by the Chief Justice by order for judgment debt interest (whichever rate is the higher rate) which shall be applicable regardless of whether the judgment debt is awarded by the court or by the arbitrator.

- 19.9 Any other interest specified as payable in other parts of the Contract (regardless of whether it is stated that such interest shall be calculated in accordance with this Clause 19) shall equally be chargeable at the same rate as mentioned in Clause 19.8 above to accrue from the date(s) of receipt by the Contractor of the relevant sum(s) up to the date of actual refund by the Contractor to the Government of such sum(s).

## 20. Intellectual Property Rights

### *Warranties and Representations*

- 20.1 The Contractor hereby warrants and represents that:

- (i) The Contractor warrants that the Items and the Deliverables to be supplied under the Contract, the process of their manufacture or preparation, and any use, custody, provision, operation, possession, distribution, import or sale by the Contractor of such Items and Deliverables, do not and will not infringe the Intellectual Property Rights or any other rights of any person.
- (ii) If and to the extent any Intellectual Property Rights subsist in the Items or the Deliverables, the Contractor is either the owner of the Intellectual Property Rights, or, prior to the use or provision of the Items or the Deliverables in performing the Contract, has obtained from the owner of the relevant Intellectual Property Rights the grant of all necessary licences, consents, approvals and agreements for itself and for the Government and its authorised users, assigns and successors-in-title on the terms and conditions set out in the Contract.
- (iii) The custody, operation, possession, import, purchase and usage in the manner and for the purposes contemplated by the Contract of

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the Items and Deliverables by the Government, its authorised users, assigns, and successors-in-title will not infringe the Intellectual Property Rights or any other rights of any person.

- (iv) The Contractor is not aware of and has no reason to believe that any claims, actions, arbitrations or other proceedings have been initiated or threatened against it or the manufacturer of the Items or Deliverables or any of the Contractor Personnel for infringement of any Intellectual Property Rights or any other rights of any person.
- (v) The supply, development, design, operation, use, custody or possession by the Contractor of any of the Items or the Deliverables and other things and materials developed or provided by the Contractor or any member of the Contractor Personnel for the purposes of, or otherwise in connection with the performance of this Contract does not and will not infringe the Intellectual Property Rights or any other rights of any person.
- (vi) The exercise by the Government, its authorised users, assigns and successors-in-title of any of the rights granted under this Contract will not infringe any Intellectual Property Rights or any other rights of any person.
- (vii) The Contractor has the full capacity, power and authority to enter into this Contract and to carry out its obligations hereunder including without limitation the grant of the Licences in respect of the Intellectual Property Rights to the Government, its authorised users, assigns and successors-in-title according to Clause 20.5 below.

### *Notification*

- 20.2 Within seven (7) days of the first written request from the Government, the Contractor shall provide all such documentary evidence to the satisfaction of the Government to prove compliance with the Warranties specified in Clause 20.1 above.
- 20.3 In the event that there is any allegation, claim, action, arbitration, or other proceedings which has been made, initiated or threatened against the Contractor or the manufacturer or any of the Contractor Personnel that all or any of the Services, Items or Deliverables, infringe any Intellectual Property Rights or any other rights of any person, without prejudice to the rights and claims of the Government, the Contractor shall immediately

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notify the Government concerning such allegation, claim, action, arbitration, or other proceedings, and continue to update the Government concerning the progress and status thereof. In addition, the Contractor shall provide all such information and documents to the Government concerning such allegation, claim, action, arbitration, or other proceedings as the Government may request.

### *Licence to use the Items and the Deliverables*

- 20.4 Without prejudice to the Contractor's obligations under this Clause 20, the Government does not claim ownership of any Intellectual Property Rights which may subsist in the Items or any of the Deliverables (if any).
- 20.5 The Contractor hereby grants, or in case it is not empowered to do so, shall at its own cost and expense procure that there will be granted to the Government and each of its authorised users, assigns and successors-in-title (collectively "licensees" and each a "licensee"):
- (i) a licence which is non-exclusive, royalty-free, sub-licensable, irrevocable, transferable, effective throughout the world and throughout the Licence Term, to use, make copies, distribute, and modify the Deliverables for all or any purposes as the Government considers appropriate throughout the Licence Term;
  - (ii) in respect of each unit of Add-on Software for which the Unit Licence Fee has been paid, a licence to use the Add-on Software and its Documentation for such purposes as provided for in the Contract (or otherwise for the business of the Government B/D) and on such terms and conditions which are equivalent to or better than those published by the manufacturer for such Add-on Software whether as a standalone product or to be bundled with another product (whichever is better) for the full Licence Term; and to copy (for back-up and training) the Add-on Software and the Documentation accompanying such Add-on Software for the full Licence Term and
  - (iii) in respect of each unit of Add-on Hardware for which the Unit Purchase Price has been paid, a licence to use the Bundled Software on the Add-on Hardware for such purposes as provided for in the Contract (or otherwise for the business of the Government B/D) and on the terms and conditions are equivalent to or better than those published by the manufacturer for such

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Add-on Hardware and/or Bundled Software whether as a standalone product or to be bundled with another product (whichever is better) for the full Licence Term, and to copy (for back-up and training) the Bundled Software and the Documentation accompanying such Add-on Hardware for the full Licence Term.

(all of the rights mentioned in Clause 20.5(i) to Clause 20.5(iii) above shall be collectively referred to as “Licensed Rights”; and all licences mentioned in these Clauses shall be collectively referred to as “Licences” or individually in relation to any item as mentioned therein “Licence”).

20.6 The Contractor hereby undertakes to procure, obtain and produce for inspection by the Government within seven (7) working days upon request, at its own cost and expense, all proper licences, clearances and releases in writing and completion of all other formalities and requirements necessary to ensure that the Licences have been validly and legally granted to each licensee in accordance with Clause 20.5 above.

20.7 Reference to the “Licence Term” in Clause 20.5 above shall mean

- (i) in the case of each Licence referred to in Clause 20.5(i), the full remaining period (as from time to time extended, renewed or revived) during which all or any of the respective Intellectual Property Rights in the Deliverables continue to subsist under all and any applicable laws (including the laws of Hong Kong), counting from the date the relevant Deliverable is created; and
- (ii) in the case of each Licence referred to in Clause 20.5(ii) and Clause 20.5(iii), the full remaining period (as from time to time extended, renewed or revived) during which all or any of the respective Intellectual Property Rights in the Items continue to subsist under all and any applicable laws including the laws of Hong Kong, counting from the date the Items are delivered to the Government. This is unless the Add-on Software is a subscription-based licence in which case, the Licence Term in respect of each such item of Add-on Software shall be the Maintenance Period for such item plus all necessary earlier duration to enable the System incorporating the Add-on Software is Ready for Use.

### *Waiver of Moral Rights*

20.8 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expense, all relevant authors of the Deliverables to

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waive all the moral rights therein (whether past, present or future). The waiver shall operate in favour of the Government, its assigns, authorised users and successors-in-title and shall take effect upon creation or delivery to the Government of the relevant Deliverables or the grant of the relevant Licence (as the case may be).

- 20.9 In the event that for any reason whatsoever a Licence referred to in Clause 20.5 above has not been granted in favour of a licensee, the Contractor shall forthwith, or shall ensure that the licensor(s) who is capable of granting the Licence will respectively forthwith, upon the first written demand of the Government execute such deed and all other necessary documents under which the Government, its authorised users, successors-in-title and assigns shall be granted such Licence on the terms set out in Clause 20.5 above.

### *Intellectual Property Rights Indemnities*

- 20.10 In addition to, and without prejudice to Clause 23.2 of the Conditions of Contract and Clause 20.11 to Clause 20.14 below, the Contractor shall indemnify and keep the Government, its authorised users, assigns and successors-in-title (each an “Indemnified Party”) fully and effectively indemnified from and against:

- (1) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party (including all legal and expert costs, charges, and expenses, on a full indemnity basis); and
- (2) all and any demands, allegations, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, “Claims” and each a “Claim”); and everything stated in Clause 20.10(1) above incurred or suffered by an Indemnified Party in all and such Claims

which arise directly or indirectly as a result of or in connection with, or which relate in any way to, the infringement or alleged infringement of any Intellectual Property Rights or any other rights of any person due to all or any of the following:

- (i) the performance by the Contractor of the Work;



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- (ii) the enjoyment or exercise by any Indemnified Party of any of its rights or powers under the Contract (including under any of the Licences);
- (iii) (whether or not involving any element of fault or negligence on the part of the Contractor) any act, omission or default by the Contractor in the performance of the Contract;
- (iv) the breach of any Warranties concerning Intellectual Property Rights (including Clause 20.1 above); or
- (v) the supply, development, design, operation, use or possession by the Contractor of any hardware, software, all services (including the Items) and other things and materials developed, used or provided by the Contractor for the purposes of, or otherwise in connection with the performance of this Contract.

Each of the above is an “infringing act” and is separate and shall be construed independently and shall not prejudice, or be limited by reference to or inference from, the other of them or other provisions of this Contract.

20.11 In the event that there is an infringing act or an alleged infringing act, the Contractor shall forthwith upon the first written request of the Government, at its own costs and expenses, without prejudice to any other rights and remedies of an Indemnified Party (including in particular those under Clause 23.2 of this Conditions of Contract and Clause 20.10 above), procure the consent of all relevant parties on such terms to the satisfaction of the Government to permit the infringing act or alleged infringing act.

20.12 Without prejudice to any other rights and claims that the Government may have under the Contract or at law, if Clause 20.11 above cannot be accomplished,

- (i) the Contractor shall forthwith abstain from performing the infringing act or alleged infringing act;
- (ii) where applicable, forthwith remove any item which gives rise to any claim of infringing act and refund the total Price paid by the Government for that item;
- (iii) the Contractor shall compensate the Government for any price excess and all costs and expenses incurred by the Government in procuring and implementing replacement item; and

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- (iv) the Government may, at its option, terminate the Contract in accordance with Clause 26.1(iv) of the Conditions of Contract.
- 20.13 whether during or after the Contract Period, the Contractor shall forthwith notify the Government in writing if any claim or demand is made or action brought against it for infringement or alleged infringement of any Intellectual Property Rights or any other rights of any person arising from or in connection with any of the circumstances mentioned in Clause 20.10 above.
- 20.14 As and when the Government may require whether during or after the Contract Period, the Contractor shall, at its cost, forthwith upon receiving written directions and instructions from time to time of the Government, take all such actions (including initiating or defending a legal action in its name or in such other manner as the Government deems fit), or provide to the Government all such documents or information in the possession or under the control of the Contractor, to cause all and any claims, demands, or actions instituted against the Government and/or the Contractor referred to in Clause 20.10 above to be withdrawn, resisted, disputed, counter-claimed, settled or compromised in such manner as the Government may direct.

### **21. Technology Substitution**

- 21.1 Without prejudice and in addition to any upgrade or downgrade rights which come with the Add-on Hardware and/or Add-on Software, the Contractor undertakes to offer to the Government and the Government may, at any time before the Delivery Date for a batch of Add-on Hardware or Add-on Software, elect to obtain from the Contractor any hardware or software in substitution for the Item of Add-on Hardware (or any part thereof including any Bundled Software) and/or Add-on Software as specified in the Relevant Schedule(s) where the substitute unit contains older (i.e. downgrade) or newer (i.e. upgrade) technology or has function or performance or security or reliability characteristics similar to or better than the relevant Add-on Hardware (or such part thereof to be substituted) and/or Add-on Software. Unless the Government otherwise agrees on a case-by-case basis, such substitute unit or Add-on Hardware incorporating such substitute unit shall be offered to the Government at the same Unit Price or lower in respect of the Item of Add-on Hardware or Add-on Software which it substitutes, subject further to all discounts offered to the Government in respect of the Add-on Hardware and/or Add-on Software under this Contract. In the event that the Government elects

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to obtain the substitute unit of hardware or software from the Contractor, the provisions of this Contract shall apply to such substitute unit as it shall form part of the Add-on Hardware and/or Add-on Software.

### **22. Title to and Risk of the Goods**

22.1 All Add-on Hardware and all Licence to the Add-on Software and Bundled Software as covered by a batch of Add-on Hardware or Add-on Software shall vest in and become the property of the Government when an Acceptance Certificate is issued in respect of such batch. All risks shall pass to the Government upon passing of title but not earlier. Before the passing of the title, the risks to the Goods shall remain with the Contractor notwithstanding that they may have been delivered and/or installed at the Locations.

### **23. Liability and Indemnity**

23.1 Neither the Government nor its employees shall be liable in any way for or in respect of:

- (i) any loss of or damage to any of the Contractor's property or that of its employees, agents or sub-contractors howsoever caused; or
- (ii) any injury to or death of any of the Contractor's employees, agents or sub-contractors save and to the extent any such injury or death is caused by the Negligence of the Government or any of its employees in the course of employment.

23.2 Without prejudice to Clause 20.10 and Clause 23.1 of the Conditions of Contract, the Contractor shall indemnify and keep fully and effectively indemnified each of the Government, its authorised users, assigns and successors-in-title (each an "Indemnified Party") from and against:

- (1) all and any liabilities (including without limitation liability to pay damages or compensations), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including but without limitation all legal and expert costs, charges and expenses on a full indemnity basis); and
- (2) all and any demands, allegations, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against

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any person (regardless of whether or not they have been settled or compromised) (collectively “Claims” and each a “Claim”) and everything stated in Clause 23.2(1) above incurred or suffered by an Indemnified Party in all and such Claims,

which arise directly or indirectly, as a result or in connection with, or which relate in any way to, all or any of the following:

- (i) the negligence, recklessness or wilful misconduct of the Contractor or anyone of the Contractor Personnel;
- (ii) the failure of the Contractor to comply with or observe any terms or conditions of this Contract;
- (iii) any Warranty is untrue, incomplete or inaccurate;
- (iv) failure of the Contractor or any of the Contractor Personnel to comply with or observe any law and regulation in the performance of the Contract;
- (v) any act or omission of the Contractor or of anyone of the Contractor Personnel;
- (vi) any loss, damage, injury or death referred to in Clause 23.1 above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment); or
- (vii) any injury or death of any third party, or any loss of or damage to property sustained by any third party, in consequence of any act, omission, default or negligence of the Contractor or anyone of the Contractor Personnel.

23.3 For the purposes of Clause 23.1 and Clause 23.2(vi) above, but not otherwise, “Negligence” shall have the same meaning given to it in Section 2(1) of the Control of Exemption Clauses Ordinance, Chapter 71 of the Laws of Hong Kong. Each of Clause 23.2(i) to Clause 23.2(vii) above shall be construed independently and shall not be limited or restricted by reference to or inference from the other of them or any other provision of this Contract.

### **24. Manpower**

- 24.1 To ensure successful and satisfactory completion of all the Work to be carried out by the Contractor, the Contractor shall deploy a team of professional staff conforming to the requirements as stipulated in Brief (if any).
- 24.2 None of the Contractor Personnel may be replaced or removed unless the prior written approval has been given by the Government B/D Representative.
- 24.3 Without prejudice to other rights and claims of the Government, the Contractor shall, upon request by the Government B/D Representative, replace any Contractor Personnel for reason of:
- (i) unsatisfactory performance;
  - (ii) having done or permitted to be done anything which constitutes as a breach of any obligations on the part of the Contractor or obligations owing by the relevant Contractor Personnel to the Government under any undertaking signed by him; or
  - (iii) having failed in any security checking including criminal record checks conducted by the Government.
- 24.4 In the event that any of the circumstances mentioned in Clause 24.2 or Clause 25.3 above occurs, the Contractor shall propose to the Government B/D Representative for his approval a nominee to replace the outgoing Contractor Personnel with the support of the curriculum vitae of that nominee and other documentary evidence to the satisfaction of the Government B/D Representative which shows that the proposed nominee has no lesser qualifications and experience than the outgoing Contractor Personnel as at the date of his proposed joining as a member of Contractor Personnel. If approved by the Government B/D Representative, the nominee shall be deployed to replace the outgoing Contractor Personnel within two (2) weeks or such later date as may be allowed by the Government B/D Representative after the Government's relevant approval or request as mentioned in Clause 24.2 or Clause 24.3 above (as the case may be).
- 24.5 The appointment or replacement of any Contractor Personnel to undertake any part of the Work shall not relieve the Contractor from any liability or

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obligation under this Contract and the Contractor shall be responsible for the acts, omissions, defaults and neglects of anyone of the Contractor Personnel, its agents, employees and contractors as fully as if they were the acts, omissions, defaults or neglects of the Contractor.

- 24.6 Unless with the prior written approval of the Government B/D Representative, the Contractor may not assign a Contractor Personnel designated for one post to perform work of another post.
- 24.7 Unless with the prior written approval of the Government B/D Representative, the Contractor shall not assign or procure or allow any Contractor Personnel, who is required under the Contract to be stationed at the designated premises on a full time basis, to perform work or service of any nature other than the Services whether for his own account or for or on behalf of the Contractor or for any other person and whether or not for a fee.
- 24.8 The Contractor shall provide a list of the Contractor Personnel within two (2) weeks after the commencement of the Contract Period, and shall inform the Government of any change to the list within seven (7) days.
- 24.9 The Contractor shall appoint one of the members of the Contractor Personnel as the Contractor Representative who shall have the responsibility and authority for the overall progress and performance of the Work and to whom all questions regarding the Contract can be referred. The Contractor shall provide a contact telephone number of the Contractor Representative for contact round-the-clock.
- 24.10 All rights and powers of the Government under the Contract may be exercised by the Government B/D Representative. Without prejudice to the generality of the foregoing, the Government B/D Representative will monitor the performance of the Contractor during the Contract Period and may give all such directions and instructions from time to time to the Contractor as the Government B/D Representative considers appropriate in the discharge by the Contractor of the Work. The Contractor shall comply with all such directions and instructions in full.

## 25. Software Asset Management

- 25.1 Contractor shall at all times during the Contract Period exercise due diligence in equipment and software asset management and as and when required by the Government, furnish to the Government satisfactory evidence that this Clause 25 has been complied with.

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- 25.2 The Contractor warrants and undertakes that the use, design, creation, development, operation, possession, provision, repair or maintenance of any equipment, software or services (including the Items) by the Contractor for the purpose of or otherwise in connection with the performance of this Contract made thereunder shall not infringe any Intellectual Property Rights or any other rights of any person.
- 25.3 The Contractor shall notify the Government immediately in writing of any allegations, claims, demands, actions and/or other proceedings in relation to any infringement of Intellectual Property Rights or any other rights and any progress thereof from time to time.
- 25.4 If the Contractor's use, design, creation, development, operation, possession, provision, repair or maintenance of any equipment, software or services (including the Items) for the purpose of or otherwise in connection with the performance of this Contract is held by a court to constitute an infringement of Intellectual Property Rights or any other rights of any person, the Government may without prejudice to any other rights and remedies that it may be entitled to under this Contract, terminate this Contract.
- 25.5 The Contractor shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified on the terms set out in Clause 20.10 and Clause 23.2 of the Conditions of Contract in connection with any claim or allegation that the use, design, creation, development, operation, repair, maintenance, provision or possession of any equipment, software or services (including the Items) under this Contract infringes any Intellectual Property Rights or any other rights of any person.

## **26. Termination of the Contract**

- 26.1 Without prejudice to the other rights and claims of the Government under the Contract or at law, the Government shall be entitled to terminate the Contract if:
- (i) the Contractor fails to observe or perform any of the terms and conditions of the Contract and (in the case of a breach capable of being remedied) has failed to remedy the breach to the satisfaction of the Government within fourteen (14) days (or such longer period as the Government may, in its sole discretion, allow) after the issuance by the Government to the Contractor of a notice in writing requiring it to do so;

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- (ii) the Contractor abandons the Contract in part or in whole;
- (iii) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government;
- (iv) if any event or circumstance occurs which enables the Government to terminate the Contract under any of the provisions of the Contract;
- (v) the Government has rejected a batch of Add-on Hardware and/or Add-on Software under Clause 11.1(iii) of the Conditions of Contract, or under Clause 14.4 of the Conditions of Contract, and also rejected all those batches of Add-on Hardware and/or Add-on Software which have not been accepted (if any), pursuant to Clause 11.2 of the Conditions of Contract, and also elects not to issue any further Order under the Contract;
- (vi) the Government has rejected the Support Services under Clause 14.6 of the Conditions of Contract.

26.2 The Government may immediately terminate the Contract upon the occurrence of any of the following events:

- (i) a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, bankruptcy, administration, reorganisation, reconstruction, or dissolution of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the competent authority in writing, or the Contractor makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or all or any part of its business or assets;
- (ii) the Contractor or its sub-contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which



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would otherwise be contrary to the interest of national security;

- (iii) the continued engagement of the Contractor or its sub-contractor or the continued performance of the Contract is contrary to the interest of national security;
- (iv) the Government reasonably believes that any of the events mentioned above is about to occur.

26.3 Each of the grounds entitling the Government to terminate the Contract as specified in Clause 26.1 and Clause 26.2 above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other term of this Contract.

26.4 Instead of terminating the Contract in relation to all Items pursuant to Clause 26.1 above, the Government may elect, but is not obliged to, terminate the Contract in relation to some Items of such specified quantities covered by certain batch(es) of Add-on Hardware and/or Add-on Software or some batch(es) of Add-on Hardware or Add-on Software only but not all batches as the case may be (“Partially Rejected Goods”) in light of the occurrence of any of the events specified in Clause 26.1(i) to Clause 26.1 (iv) of the Conditions of Contract or otherwise refrain from rejecting all Goods as it may have been entitled to under Clause 11.1(iii) and/or Clause 11.2 and/or 14.4 of the Conditions of Contract (“Partial Termination”).

26.5 For the avoidance of doubt, all provisions allowing the Government to terminate or suspend the Contract or any part thereof shall be construed independently without reference to or inference from one another. For the avoidance of doubt, the Contractor shall be responsible for all acts, omissions, defaults and neglects of each member of the Contractor Personnel including any sub-contractor, and the agents and employees of such sub-contractor as fully as if they were the acts, omissions, defaults or neglects of the Contractor based on which any right of termination may be exercised.

### **27. Consequences of Early Termination**

27.1 Upon expiry or early termination of the Contract (howsoever occasioned) (“Termination”):

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- (i) the Contract shall be of no further force and effect, but without prejudice to:
  - (1) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
  - (2) the rights and claims which have accrued to a party prior to the Termination; and
  - (3) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination and any provisions of the Contract necessary for the interpretation or enforcement of the Contract (including without limitation Clauses 1, 17, 20, 22 to 48 of the Conditions of Contract);
- (ii) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damage (including any direct, special, indirect or consequential damage of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor due to the Termination;
- (iii) without prejudice to the other rights and claims of the Government, in the case if the Contract is terminated pursuant to Clause 26.1 or Clause 26.2 of the Conditions of Contract, the Contractor shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation the excess contract price payable by the Government for procuring (1) items of the same or more advanced or similar models or versions to the Items which could have been procured under this Contract in each case up to the maximum quantity specified in the Relevant Schedules for each such relevant Item under a separate contract in comparison with the price for such Items as specified in the Relevant Schedules; and (2) the services

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similar to the Maintenance Services for these replacement items under a separate contract in comparison with the Annual Maintenance Charges payable to the Contractor as specified in the Relevant Schedules over the unexpired portion of the Maintenance Period; and (3) all administrative and legal costs incurred by the Government in (i) monitoring the Contract over any delay period prior to the Termination; and (ii) terminating the Contract; and (iii) making procurement as aforementioned in (1) above; and (4) any difference between those costs arising from the maintaining and supporting the existing hardware and/or software with which the Items were intended to replace and the annual maintenance charges for the Maintenance Services whether during the delay period before Termination or after Termination until procurement of the replacement items as mentioned in (1) above; interim and/or final statements of these losses, damage, liabilities, costs and expenses may be issued from time to time after the Termination by the Government to the Contractor whereupon the Contractor shall be liable to pay such amount as demanded in each of these statements within seven (7) days;

- (iv) the Contractor shall remove those Goods which have been rejected by the Government from the Government's premises;
- (v) upon a Partial Termination pursuant to Clause 26.4 of the Conditions of Contract:
  - (1) the provisions in the Contract to the extent they apply or concern or relate to the Partially Rejected Goods shall be of no further force and effect, but without prejudice to:
    - (a) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor;
    - (b) the rights and claims which have accrued to a party prior to the Partial Termination; and
    - (c) the continued existence and validity of all

remaining provisions of the Contract.

- (2) the same consequences specified in Clause 26.2 to Clause 26.4 above shall apply save that references to “Termination” shall mean “Partial Termination”; and references to “Goods” shall mean “Partially Rejected Goods”.
  
- (vi) Upon request by the Government and/or in the event of the Termination of the Contract, the Contractor shall at its sole costs and expenses promptly deliver to the Government all copies of the Deliverables produced in the performance of the Work, and all confidential information and copies thereof then in the Contractor’s custody control or possession, whether in their completed form or not.

### **28. Connection of Other Computer Equipment and Programs**

- 28.1 The Contractor shall permit the Government at no extra charge to connect or install other computer equipment and/or program to the Goods, which is not supplied under the Contract and which the Government considers to be compatible with such Goods. The Contractor shall provide all reasonable assistance to the Government with regard to the installation, acceptance tests and maintenance of such computer equipment and/or programs upon request by the Government. Such assistance shall form part of the Maintenance Services and no further charges shall be payable by the Government during the Warranty Period.

### **29. Trade-in Services**

- 29.1 Regardless of whether the Contractor has offered a Trade-in Price for a Trade-in Item in Schedule 12 of Contract Schedules, it shall be obliged to, at its cost and at no charge to the Government, collect and remove all Trade-in Items from the relevant Location(s) unless the Government decides to retain the Trade-in Items. For the avoidance of doubt, regardless of whether or not the Contractor has offered any Trade-in Price for any Trade-in Item, the Government has the absolute discretion to determine whether or not to retain the Trade-in Items, and if so, the quantity to be retained. For the avoidance of doubt, the Contractor is free not to offer any Trade-in Price for a Trade-in Item.

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- 29.2 If the Contractor has offered a Trade-in Price for the Trade-in Item in Schedule 12 of the Contract Schedules, the Contractor shall pay the Government the Trade-in Price of Trade-in Items at the rates as specified therein multiplied by the respective quantities.
- 29.3 For the purpose of this Clause 29, all risks in the Trade-in Items shall be vested in the Contractor on the date of their removal or collection by the Contractor. The title of such Trade-in Items shall be passed to the Contractor only after the Contractor settles the payment for such Trade-in Items, or after the Government has issued the Acceptance Certificate in respect of the last batch of Add-on Hardware and/or Add-on Software, whichever is later. If the Contractor does not offer a Trade-in Price for a Trade-in Item, but the Government still requests the Contractor to collect the same pursuant to Clause 29.1 above, the title to the Trade-in Item shall pass to the Contractor as soon as it collects the same, or after the Government has issued the Acceptance Certificate in respect of the last batch of Add-on Hardware and/or Add-on Software, whichever is later.
- 29.4 The Contractor shall collect the same from the Locations within two (2) weeks upon receipt of the Government's request, failing which the Contractor shall compensate the Government for any costs incurred in removing such items and storing such items in another place.
- 29.5 Notwithstanding Clause 29.4 above, if the Contractor fails to collect the Trade-in Items by the time specified in Clause 29.4 above, the Government shall be at liberty to remove and dispose of the Trade-in Items and/or to store the Trade-in Items at another place, and/or to resell at the Government's absolute discretion such Trade-in Items without prior notice to the Contractor. The Contractor shall compensate the Government for all costs and losses incurred by the Government arising from any removal, disposal, storage and/or resale on a full indemnity basis. Without prejudice to the generality of the foregoing, in the case of resale, the price realised on such resale shall belong to the Government and in addition, the Government shall recover from the Contractor any price difference between the Trade-in Price(s) offered by the Contractor and the actual sale prices at which the relevant Trade-in Item(s) have been sold as a debt as well as all administrative costs incurred from the resale.
- 29.6 The Trade-in Items in Schedule 12 of Contract Schedules for trade-in are offered on an as-is basis and the Government does not guarantee the condition (in whatsoever form), serviceability, functionality, merchantability and fitness for any purpose of these items.
- 29.7 If data erasing services are required as stated in the Brief, the Contractor

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shall securely erase all data in the Trade-in Item as Support Services at the Unit Charging Rate stated in Schedule 9 of Contract Schedules and in a manner in accordance with paragraph 1.14 of the Reference Maintenance Services Requirements for IT Products.

- 29.8 In relation to the Trade-in Items that are governed by the Product Eco-responsibility Ordinance (Chapter 603 of the Laws of Hong Kong), the Waste Disposal Ordinance (Chapter 354 of the Laws of Hong Kong) and their subsidiary regulations (e.g. regulated electrical equipment under the Product Eco-responsibility Ordinance, and chemical wastes under the Waste Disposal Ordinance), the Contractor shall comply with the relevant statutory requirements (e.g. waste disposal licence required for disposal, permit required for export, and other requirements for collection, storage, packaging and labelling of e-waste and chemical waste) in execution of the Contract and in any subsequent transfer of any of the Trade-in Items to any third parties or in exporting any of the Trade-in Items by the Contractor.
- 29.9 The Contractor shall ensure that the Trade-in Items will be refurbished for reuse only. For those items that cannot be refurbished and will be disposed of or exported for disposal, the Contractor shall ensure that they will be treated or handled in a way that complies with the relevant environmental legislation including the Waste Disposal Ordinance, Chapter 354 of the Laws of Hong Kong.

### **30. Year 2000 Compliance**

- 30.1 The Contractor warrants that the Add-on Hardware and/or Add-on Software shall be Year 2000 compliant.
- 30.2 All Add-on Hardware and/or Add-on Software shall conform to year 2000, meaning that neither performance nor functionality is affected by dates prior to, during and after the year 2000. In particular:
- (i) No value for current date will cause any interruption in operation;
  - (ii) Date-based functionality must behave consistently for dates prior to, during and after year 2000;
  - (iii) In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules; and
  - (iv) Year 2000 must be recognised as a leap year.

Note: The text in italics above is quoted from British Standards

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Institution committee BDD/1/-/3.

- 30.3 Notwithstanding that this Contract or any warranty provision in it is expressed to endure for a period of time, the warranty provided for in this Clause shall survive the expiry or termination of this Contract and endure for the life of the Add-on Hardware and/or Add-on Software.
- 30.4 The Contractor shall immediately on demand by the Government remedy or correct any defect in the Add-on Hardware and/or Add-on Software which causes a breach of the warranty in Clause 30.1 above whether or not such defect has resulted in a failure of the Add-on Hardware and/or Add-on Software at the time of the Government becoming aware of it.
- 30.5 The Contractor shall indemnify the Government on the terms set out in Clause 23.2 of the Conditions of Contract if the Contractor is in breach of the warranty in Clause 30.1 above.

### **31. Conflict of Interest**

- 31.1 The Contractor shall during the Contract Period and for six (6) months thereafter:
- (i) ensure that it (including each and every employee of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons (collectively, “restricted group”), shall not undertake any service, task, or job or do anything whatsoever on its own account or for or on behalf of any third party (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor’s duties or obligations under the Contract without the prior written approval of the Government (which approval shall not be unreasonably refused or delayed); and
  - (ii) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests of the Contractor or any other member of the restricted group, conflict or compete, or may be seen to conflict or compete, with the Contractor’s duties or obligations under the Contract.

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31.2 The Contractor shall ensure that each member of the restricted group shall keep themselves informed and inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which the interests of such persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's obligations under this Contract.

31.3 In the Contract:

(i) "associate" of a person means:

- (1) a relative or partner of that person; or
- (2) a company one or more of whose directors is in common with one or more of the directors of that person;

(ii) "associated person" of another person means:

- (1) any person who has control, directly or indirectly, over that other person;
- (2) any person who is controlled, directly or indirectly, by that other person; or
- (3) any person who is controlled by, or has control over, that other person mentioned in Clause 31.3(ii)(1) or Clause 31.3(ii)(2) above;

(iii) "control" possessed by a person over another person means the power of the first-mentioned person to secure:

- (1) by means of the holding of shares or interests or the possession of voting power in that other person or any other person;
- (2) by virtue of powers conferred by any constitution, articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that other person or any other person; or
- (3) by virtue of holding office as a director in that other person or any other person;

that the affairs of that other person are conducted in accordance with the wishes of person possessing the control;



- (iv) “director” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director; and
- (v) “relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent.

### **32. Confidentiality**

32.1 The Contractor shall not disclose any information, report, document, plan, record, data, database, code or particulars (i) furnished by or on behalf of the Government or by any other person to the Contractor or anyone of the Contractor Personnel, or any part respectively thereof; or (ii) otherwise is accessible by or available to the Contractor or anyone of the Contractor Personnel in the course of performing the Contract; or (iii) processed or stored by or transmitted to the whole operating units or any Item covered by a batch of Add-on Hardware and/or Add-on Software and/or the Existing Hardware and/or the Existing Software (collectively “confidential information”), provided that the restrictions on disclosure contained in this Clause 32.1 shall not apply to the disclosure of any confidential information:

- (i) to any person employed, used or engaged by the Contractor in the conduct of the Services in circumstances where such disclosure is necessary in the reasonable opinion of the Contractor for the performance of the Contractor’s duties and obligations under the Contract, provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the said information to a third party;
- (ii) already known to the recipient other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons in breach of confidence under this Contract or the general law;

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- (iii) which is or becomes public knowledge other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons in breach of confidence under this Contract or the general law;
  - (iv) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order or judgment of a court of Hong Kong; or
  - (v) with the prior consent in writing of the Government.
- 32.2 Any disclosure permitted under Clause 32.1 (excluding Clause 32.1(iv) above) of this Part shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 32.1 above and the Contractor shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.
- 32.3 The Contractor shall not, and shall procure and ensure each one of the Contractor Personnel and other person who may be imparted with any confidential information in accordance with Clause 32.1 above shall not disclose, make use of or reproduce any confidential information other than in the performance of the Contractor's obligations under the Contract or with the prior written consent of the Government.
- 32.4 The Contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the confidential information in the Contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.
- 32.5 The Contractor shall not, and shall ensure that the Contractor Personnel will not, save to the extent necessary for performing the Contract, peruse, retain possession or control of, or duplicate, any confidential information or any copy thereof (in whatsoever media or format).
- 32.6 The Contractor shall ensure that all of the Contractor Personnel and any other persons engaged in any Work in connection with the Contract are aware of and comply with the provisions of this Clause 32 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 32.7 The Contractor shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified on the terms set out in Clause 23.2 of the Conditions of Contract as a result of any breach of confidence (whether actionable based on this Contract or

at law) by any such persons.

- 32.8 The Contractor shall promptly notify the Government of any breach of confidence, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person in light of such breach of confidence.
- 32.9 The Contractor acknowledges that any unauthorised disclosure or use of the confidential information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 32 and/or specific performance ensuring the compliance of this Clause 32 in light of any threatened or actual breach of this Clause 32, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 32.10 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any associate or associated person or employee, sub-contractor or agent use, sell, license, sub-license, create, develop or otherwise deal in any confidential information.
- 32.11 For the avoidance of doubt, to the maximum extent permitted by the law, and without prejudice to any provision in the Code on Access to Information, the Government does not owe any duty of confidentiality to the Contractor and nothing in the Contract or in the Invitation Documents or at law shall be construed or apply to give rise to any such duty. Any alleged loss or claim or liability incurred by the Contractor arising from any alleged breach of any alleged duty of confidentiality shall be denied and disclaimed to the fullest extent.

### **33. Contractor's Performance**

- 33.1 The Contractor should note that its performance under this Contract will be monitored and may be taken into account when its future Proposals submitted in response to any Briefs issued are evaluated.

### **34. Exchange of Correspondence**

- 34.1 Correspondence on contractual and technical matters may be exchanged between the Contractor and the Government Representative.

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### **35. Admission to Government's Premises and Government's Right of Access**

- 35.1 The Government Representative reserves the right to refuse admission to any premises occupied by the Government any person employed or engaged by the Contractor or by the Contractor Personnel, whose admission would be, in the sole and absolute opinion of the Government Representative, undesirable.
- 35.2 If and when directed by the Government Representative, the Contractor shall provide to the Government a list of the names, posts and staff identity card numbers of all Contractor Personnel who may at any time require admission on behalf of the Contractor ("collectively "Relevant Personnel") to any premises occupied by the Government for performing the Work. Such list shall specify the capacities in which these persons are employed or appointed by or otherwise connected with the Contractor and shall contain such other particulars as the Government Representative may reasonably require.
- 35.3 The Contractor shall procure that all its Contractor Personnel who have been given access to any premises occupied by the Government comply with any security, health and safety or other policies and regulations that apply to such premises. The Contractor shall also ensure that its operation does not disrupt the orderly operation of the premises occupied by the Government.
- 35.4 In the event that the Contractor fails to comply with Clause 35.2 or Clause 35.3 above and the Government Representative determines that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract pursuant to Clause 26.1(iv) of the Conditions of Contract.
- 35.5 The Contractor, shall ensure that all persons engaged by it in carrying out the Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.

### **36. Sub-contracts**

- 36.1 The Contractor shall not, without the prior written consent of the Government, enter into any sub-contract with any person for the performance of any part of the Contract provided that this provision shall not apply to:
- (i) the purchase by the Contractor of equipment and materials; and

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(ii) the sub-contract(s) (if any) specified in Schedule 10 of Contract Schedules.

36.2 The Contractor shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. All acts, omissions and defaults of all Contractor Personnel including any sub-contractor appointed by the Contractor and the employees and agents of such sub-contractor shall be deemed as the acts, omissions and defaults of the Contractor. If requested by the Government, the Contractor shall within three (3) days provide the Government with copies of any sub-contracts.

### **37. Waiver**

37.1 Time is of the essence of the Contract with regard to all obligations of the Contractor but no failure or delay by either party to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right or remedy. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by either party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

37.2 Without prejudice to the generality of the foregoing, any right of termination of the Contract or any other right or power of whatsoever nature conferred upon the Government by the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise such a right of termination shall constitute a waiver by the Government of any such other right or remedy.

### **38. Severability**

38.1 If any provision or part of a provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions or parts of such provisions of the Contract, all

of which shall remain in full force and effect.

### **39. Variations**

39.1 Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an instrument in writing and duly signed by the Contractor and the Government.

### **40. Entire Agreement**

40.1 The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements, arrangements or understanding between them relating to the subject matter hereof. The Contractor acknowledges and agrees that in entering into the Contract, it has not relied on any statements, warranties, or representations given or made by the Government.

### **41. Recovery of Sums Due**

41.1 If any sum of money shall be due or payable from the Contractor to the Government under the Contract, the same may be deducted from or set off against any sum then due or payable or which at any time thereafter may become due or payable to the Contractor by the Government under the Contract or any other Individual Contract or any other contract with the Government.

### **42. Joint and Several Obligations in the Case of an Unincorporated Joint Venture**

42.1 Where the Contractor comprises more than one person or are parties to an unincorporated joint venture, each such person or each such party to the unincorporated joint venture (as the case may be) assumes all obligations of the Contractor under the Contract on a joint and several basis.

42.2 A reference to the Contractor in this Contract is a reference to each of the persons constituting the Contractor.

### **43. Governing Law and Jurisdiction**

43.1 This Contract shall be governed, construed and interpreted in all respects in accordance with the laws of Hong Kong.

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43.2 Each of the parties hereto submits to the exclusive jurisdiction of the courts of Hong Kong in relation to any dispute arising from or in connection with the Contract.

### **44. Complaints**

44.1 If any person or organisation makes a complaint concerning the System and/or the Work, the Government shall investigate or request the Contractor to immediately investigate, at the Contractor's sole cost and expense, the complaint. The Contractor shall take such corrective action as is appropriate.

44.2 The Contractor shall immediately upon receipt of a complaint notify in writing the Government Representative of such complaint.

44.3 The Contractor shall record all complaints of any nature received from whatever source in a register kept for that purpose. A copy of the register of complaints shall be provided by the Contractor to the Government Representative at such time as the Government Representative may specify. Sufficient details shall be recorded in the register to enable the Government Representative to ascertain the nature of the complaint, the name of the person making the complaint, the date and time when it is received, the action taken to remedy the complaint, the time and date when the remedy is completed, names of the Contractor's supervisory and other staff involved in the action complained of.

44.4 The Contractor shall upon request provide the Government with all relevant information relating to a complaint raised directly against the Government but arising out of the acts or omissions of the Contractor in its performance of the Services.

44.5 The Government reserves the right to disclose any information, outcome and conclusion relating to a complaint concerning the System and/or the Work.

### **45. Ombudsman / Auditor / Independent Commission Against Corruption (ICAC) Investigations and Recommendations**

45.1 In the event that the Ombudsman or the Government's internal and/or external auditors or ICAC identify any inappropriate practices or procedures being undertaken by the Contractor in its performance of the Services or where any practice or procedure undertaken by the Contractor has resulted in a finding of maladministration causing injustice against the Government, the Contractor shall forthwith upon written notice from the

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Government cease the practice or procedure specified therein and shall amend the practice or procedure to the satisfaction of the Government.

- 45.2 In the event that the Ombudsman or the Government's internal and/or external auditors or ICAC make recommendations for the amendment and/or improvement of any of the practices or procedures undertaken by the Contractor in its performance of the Services, the Contractor shall amend the practice or procedure to take into account the recommendations made.

### **46. Contracts (Rights of Third Parties) Ordinance**

- 46.1 It is noted that there is no provision in Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) ("Chapter 623") which states that the Ordinance applies to the Government or contracts entered into by the Government.

- 46.2 Notwithstanding Clause 46.1 above, it is hereby declared that no person may be treated as a third party who or which may enforce any term of the Contract under or for the purposes of section 4 of Chapter 623.

- 46.3 Nothing in Clause 46.2 above is intended to affect the following:

- (i) the power of the Government Representative to act for the Government including the exercise of any right under, or the enforcement of any claim or remedy, arising from or in connection with or in relation to, this Contract;
- (ii) the power of a public officer under any law or regulation including any Ordinance or subsidiary legislation or any other legal instrument;
- (iii) the power of a public officer to act by his own title or for the Government Representative or for the Government in any legal proceedings arising from or in connection with or in relation to the Contract (including the Secretary for Justice);
- (iv) the rights and obligations of any personal representative, administrator or other successor-in-title of the Contractor;
- (v) the rights and obligations of any assignee or transferee of the Contractor under any assignment or transfer which has been approved by the Government;



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- (vi) the rights and obligations of any Government's successor-in-title and person deriving title under any of them, and the Government's assignee and transferee (and in the case of assignee or transferee, in accordance with the terms of the assignment and transfer agreed by the Government); and
- (vii) the rights of the Government and the Government Representative under any warranty or guarantee or undertaking or indemnity or insurance policy or other collateral contract granted or issued or entered into by any person other than the Contractor pursuant to the terms of the Contract.

### **47. United Nations Convention on Contracts for the International Sale of Goods not applicable**

47.1 The Contractor hereby agrees that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

### **48. Order of Precedence**

48.1 In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract (including those forming part of the Overall Specifications), the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- (i) the Brief;
- (ii) these Conditions of Contract;
- (iii) the Contract Schedules before completion by the Contractor when submitting the Proposal in response to the Brief;
- (iv) the documents published on the GITP Website (apart from those already mentioned above); and
- (v) the Proposal including the Contract Schedules as submitted by the Contractor in response to the Brief (but if and to the extent that they are submitted in compliance with the Brief, they shall prevail over the items stated in (iv) above).

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\*\*\* End \*\*\*

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Annex A

## Certificate of Product Patching

**Contractor Name:** \_\_\_\_\_ **Contract Number:** \_\_\_\_\_

**Department/Bureau:** \_\_\_\_\_

**Issue Date:** \_\_\_\_\_

**Order Reference:** \_\_\_\_\_

This is to certify that the latest patches, where applicable, have been applied to the ordered hardware/software. The patches are listed in the following table:

Product (Description with Version / Release / Revision)	Patch (Description uniquely identifies the patch)	Release Date (if available)	Date of Applying Patch	Remarks

The following latest patches are not applied because of the following reasons:

Product (Description with Version / Release / Revision)	Patch (Description uniquely identifies the patch)	Release Date (if available)	Reason for Not Applying

**Contractor Representative**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_  
(Please print in BLOCK LETTERS)

**Title:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Company Chop**