

1. DEFINITIONS

- 1.1. Unless the context otherwise requires-
"Agreement" means the Agreement which incorporates the terms and conditions herein, and shall include all or any schedules and appendices forming part of or incorporated by the Agreement
"Customer", "Service Provider", "Equipment", "Services", "Service Levels", "Term" and "Site" shall bear the meaning ascribed in the Agreement
"Affiliate" means any subsidiary or related corporation of the Service Provider as defined in the Companies Act (Cap. 50)

2. PRECONDITION TO COMMENCEMENT

Notwithstanding the stated Term, Service Provider is not obliged to provide the Services until:-

- (a) the Charges have been paid; or
- (b) Where Equipment was not purchased from or maintained by Service Provider or its Affiliate immediately prior to the Agreement, Service Provider may inspect (at no additional charge to the CUSTOMER) the Equipment and shall carry out repairs and adjustments as it, in its sole opinion, deems necessary to enable the Equipment to be in good working order, subject to the payment by Customer for all parts used and labour expended in such repairs and adjustments at the Service Provider's prevailing charges.

3. TERM & TERMINATION

- 3.1 This Agreement may not be terminated during the Term unless earlier terminated in accordance with the terms herein.
- 3.2 Service Provider may without prejudice to its other rights forthwith terminate the Agreement (during the Term thereof) by giving the customer a written confirmation and shall take effect immediately if: -
- (a) The Charges or any monies due and payable by Customer or any part thereof shall be unpaid whether formally demanded or not within thirty (30) days after the date on which payment is due;
 - (b) Customer shall commit a material breach of any of the covenants, stipulations or agreements herein contained to be observed or performed;
 - (c) Customer shall go into liquidation or have any order made or resolution passed for such winding-up or shall otherwise become insolvent or make any assignment or arrangement for the benefit of its creditors; and
 - (d) if a Writ of Seizure and Sale shall be levied upon the movable properties with the premises of Customer and is not discharged within fourteen (14) days of such levy.
- 3.3 Customer may terminate the Agreement forthwith if Service Provider commits a material breach of any term of the Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) days of a written notice specifying the breach and requiring that the same be rectified.
- 3.4 If, in the opinion of the Service provider, spare parts for the maintenance of the Equipment are no longer readily available, the Service Provider may upon giving the Customer three (3) month's written notice terminate the Agreement or convert to the Agreement to a scheme where spare parts will not be included and for which the Charges will be amended to reflect the changes.

- 3.5 This agreement will expire at the end of the term.

4 SERVICES

- 4.1 In consideration for the payment of the Charges, but subject to the provisions of Clause 5, the Service Provider shall provide the Services in accordance with the Service Levels in relation to Equipment kept at the Site.

- 4.2 The Service Provider shall at its sole discretion determine whether to provide the Services by itself or through its agents and/or representatives and further reserves the right to:-

- (a) delegate or sub-contract any rights or obligations under the Agreement to its Affiliates, other service providers and/or subcontractors; and/or
- (b) use in any appropriate manner the services, resources and/or equipment of its Affiliates, other service provider and /or subcontractors to perform any of its duties and/or obligations hereunder.

- 4.3 In the event that the Customer requires the Equipment to be relocated from the Site ("Relocation"), the Service Provider shall be entitled to forthwith terminate the Agreement by giving written notice to the Customer. The Service Provider may at its own option continue to provide the Services subject to its right to revise the Charges taking into account the new location of the Equipment.

- 4.4 Without prejudice to the Service Provider's right to terminate the Agreement or to revise the Charges as aforesaid, the Service Provider may also agree (but shall not be obliged) to provide services in respect of transporting, reinstalling and/or assembling the Equipment at the new location at such rates and charges as may be agreed between the parties without being liable for any loss or damage (including any consequential loss or damage) arising from or in connection the Relocation and the Customer shall indemnify and hold harmless the Service Provider against any claim by third parties for loss or damage (including consequential loss or damage) arising from or in connection with the Relocation.

- 4.5 The parties may at any time agree to include new items of Equipment or additional services to the Agreement by written addendum signed by both parties setting out the additions and specifying the charges payable thereto in addition to the original charges.

5 EXCEPTED SERVICES

- 5.1. For the avoidance of doubt, the Services do not include the following:
- (a) Support of any software which is developed, or otherwise owned, by anyone other than the specified software [solution] vendor;
 - (b) Support of any product modified or altered by a party other than the specified software vendor and/or Service Provider personnel, with or without the prior acknowledgement by Service Provider;
 - (c) Restoration of lost data, whether occasioned by Service Provider or Customer;
 - (d) Correction of error or defects due to cosmetic wear and tear or cosmetic damage;

- (e) Services in respect of Relocation of the Equipment;
 - (f) Integration, installation and configuration of fixes, maintenance releases and new versions (other than the answering of questions related to such activities), unless otherwise covered under the Agreement;
 - (g) Integration, installation and configuration of the product/solution in its original configuration to operate with new releases of other products such as operating systems, data communications products and databases (other than the answering of questions related to such activities), unless otherwise covered under the Agreement;
 - (h) Support of any problems to the extent caused by the negligence of Customer;
 - (i) Support of any software product installed or operated other than in accordance with the applicable End-User License Agreement and the Documentation of the specified software product, unless otherwise proposed and approved by both the Customer and an authorized Service Provider technical consultant; and
 - (j) Support of any software/products used on or with equipment or system software not fully compatible with that described in the product's applicable documentation without the prior acknowledgement and agreement from an authorized Service Provider technical consultant.
 - (k) Furnishing and/or supplying charges and batteries for DC powered systems comprised in the Equipment and/or any other consumables or associated items to be used on the Equipment including without limitation, any IT security, network storage, networking products, teletype terminals, monitors, hard disk, disk drivers, computer mouse and consumables for printers.
- 5.2. The Service Provider shall not be obliged to provide the Services if the breakdown or malfunction of the Equipment :-
- (a) has not been notified in writing to the Service Provider;
 - (b) is attributable to:
 - i. the neglect, accident or misuse on the part of the Customer;
 - ii. any part of the Equipment having been modified, replaced or tampered with without the prior written consent of the Service Provider;
 - iii. unusual or abnormal physical, environmental or electrical stress, or operation in excess of the specification recommended by the Equipment manufacturer or Service Provider.
 - iv. use in conjunction with equipment or software not prescribed by the Equipment manufacturer or Service Provider;
 - (c) is due to the software resident in or used in conjunction with the Equipment having been:
 - i. modified, tempered, replaced or merged;
 - ii. corrupted by virus programme, worm hacking or whatsoever reason;
 - iii. used in conjunction with unlicensed or software not prescribed by the Equipment manufacturer or Service Provider.
6. PAYMENT OF CHARGES
- 6.1. The Charges are payable in advance at the commencement of the Term and in any event, within thirty (30) days of the Service Provider's invoice.
- 6.2. Customer acknowledges and agrees that the Charges for the Term is non-refundable, whether in part or in whole, in the event of termination of the Agreement for whatever reason and is strictly without prejudice to any other rights the Service Provider may have under the Agreement.
- Customer acknowledges that this is fair in light of the resources committed by Service Provider to meet its obligations under the Agreement.
- 6.3. Customer shall pay the Service Provider additional charges determined in accordance with the Service Providers' prevailing charges if the Customer should request the Service provider to provide the Excepted Services or other services in addition to the Services.
7. CUSTOMER'S UNDERTAKING
- 7.1. The Customer hereby agrees at its own cost and expense
- (a) to provide the Service Provider with all such information, facilities, documentation and assistance as the Service Provider may reasonably require to perform, its obligations under the Agreement;
 - (b) to provide continued access and right of way to the Site and to the Equipment to the Service Provider, its agents and representatives and to do such other acts and things as the Service Provider may reasonably require in connection with the Agreement;
 - (c) to comply with all the conditions and/or environmental standards for the use and/or operation of the Equipment specified by the Equipment manufacturer or Service Provider; and
 - (d) to furnish the Service Provider such equipment, space, electrical power and/or telecommunication facilities as is reasonably determined by the Service Provider to be suitable in order to provide the Maintenance Services;
- 7.2. Customer shall provide all consumables or replacement items reasonably required by the Service Provider to perform the Services.
- 7.3. Customer shall at all times maintain back-up of all software, programme, information and/ or data in its system or Equipment.
8. LIMITATION AND LIABILITY
- 8.1. The liability of Service Provider and its Affiliates shall, regardless of the basis of liability or the form of action, in no event exceed the total Charges paid to Service Provider for each Term of renewal thereof.
- 8.2. In no event shall Service Provider or its Affiliate be liable for costs of substitute goods or services, nor will they be liable for lost profits, loss of data, or any indirect, special, incidental, consequential, or punitive damages, however caused, whether for breach of contract, negligence or otherwise, and whether or not Service Provider or its affiliates, suppliers, licensors or distributors have been advised of the possibility of such damages.
- 8.3. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy. The foregoing allocation of risk is reflected in the fees charged for the services
9. NON-SOLICITATION
- Neither the Customer nor Service Provider nor their Affiliates, directly or indirectly solicit for employment, employ or otherwise retain the engineer, employee or staff of the other during the Term, any renewal thereof, and for a period of six (6) months after the termination of the Agreement.

10. CONFIDENTIALITY

10.1 Customer and Service Provider shall keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or in the course of performing the Services save that which is trivial or obvious, already in its possession, or in the public domain other than as a result of a breach of this clause.

10.2 The Customer and Service Provider shall take all reasonable steps to ensure compliance with the provisions of this clause by its employees agents and sub-contractors.

11. WARRANTY

Customer represents and warrants to Service Provider that it is the absolute legal and beneficial owner of the Equipment and software resident or used in conjunction therewith and free from encumbrances whatsoever.

12. GOODS & SERVICES TAX

Customer shall pay to Service Provider or reimburse to Service Provider upon written request, all applicable goods and/or service tax, or similar imposition, duty and/or levy whatsoever whether actual or contingent (collectively "Taxes") which may be imposed by the relevant authority from time to time and which the relevant authority may require Service Provider to collect or withhold on the Charges and other monies payable by Customer in respect of the provision of Services whether or not such Taxes are imposed upon first assessment or retrospectively and Service Provider shall be entitled to collect and/or withhold the same in accordance with the requirements of the relevant authority.

13. FORCE MAJEURE

If either party is unable to fulfill any of the covenants, stipulations or agreements herein contained as a result of fire, accident, riot, strike, labour dispute, any state of war, act of God, circumstances seriously disrupting public safety, peace or good order of the Republic of Singapore or causes beyond the control of either party, either party may, upon giving the other thirty (30) days' written notice to the same effect, terminate the Agreement forthwith without any liability owing to the other, save as accrued up to the date of termination.

14. GOVERNING LAWS

This Agreement shall be governed by and construed in accordance with the laws of and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the Republic of Singapore.

15. THIRD PARTY RIGHTS

Nothing in the Agreement confers any rights on any person or entity not a party to the Agreement.