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| Letter of Engagement to be used for specific contracts for the provision of software development services under the DPS established. The value of each Specific Contract shall not exceed the total value of €139,000 when the Contracting Authority is listed in Schedule 2 and €250,000 when the Contracting Authority is listed in Schedule 3 or Schedule 16.  Procurers are to review the Letter of Engagement and to fill in fields highlighted in yellow prior to issuing the Specific Contract. Fields highlighted in green are to be filled in after award of the Specific Contract. All instruction notes are highlighted in grey and are to be removed once the Letter of Engagement is finalised.  No alterations/ deviations from the templates are permitted, except where provided in the templates. |

[to insert Letterhead on first page]

Letter Ref: [insert number]

Date: [insert date]

[insert Supplier address]

Dear [insert name],

**Letter of Engagement – [insert title] (Reference:** [insert reference number]**)**

We refer you to the service requirements attached as Appendix A to this letter, detailing the scope of the services (the ‘Service’) required in relation to the [insert scope of procurement].

By virtue of this letter, [insert Contracting Authority name] wishes to engage [insert name of Supplier] (the ‘Supplier’ ) to provide it with the Service in accordance with the terms and conditions detailed in Appendix A (Service Requirements and Charges), Appendix B (Service Terms and Conditions) and Appendix C (Maintenance and Support Services) attached to this letter, as applicable.

**Term**

The Service shall commence on the [insert date] (the “Effective Date”) and terminate on the [insert date] (the ‘Term’), and shall require a maximum of [insert number of days/ weeks/ months] for development and implementation as set out in Appendix A (Service Requirements and Charges) [and subsequently the period of [insert number of months/ years] for the provision of Maintenance and Support services from the Acceptance Date.]

**Provision of the Service**

1. The Suppler shall be responsible for the:

[List of services to be amended according to the Work Package required]

1. [Analysis of the requirements including identification of business concern and requirements for new systems, strengths and weaknesses of current systems and opportunities for improvement
2. Planning and architectural design of the software requirements including mapping of software requirements and identification of risks and mitigation measures
3. Development, implementation, testing and configuration to meet the requirements in Appendix A (Service Requirements) and in accordance with the timeframes as detailed in this Letter of Engagement, including the provision of training services
4. Maintenance and support services to meet or exceed the service levels as detailed in Appendix C (Maintenance and Support Services)]
5. Any Software supplied by the Supplier must be new, original and fully licensed and any Documentation must be delivered together with manuals in the English Language.
6. The Supplier shall, during the development and implementation stages, avoid as far as possible the effects of known faults or bugs in the Software.
7. The standard of the provision of Services shall be in accordance with the Letter of Engagement. To the extent that the requirements and/or standard of the provision of Services has not been specified in the Letter of Engagement, the Supplier shall use high quality materials, techniques and standards. The Supplier shall provide the Services with the care, skill and diligence required in accordance with Best Industry Practices, including the appointing personnel with the necessary background, training, experience and ability to carry out their duties in a professional and proficient manner to the mutual understanding and reciprocal learning.
8. The Supplier shall provide the capability and flexibility to provide the Services as and when required by the Contracting Authority, within the terms and conditions set out in this Letter of Engagement, in order to provide the best services to the Contracting Authority.
9. The Supplier will ensure that any of its employees, sub-contractors, or agents, whilst on the Contracting Authority’s premises in the performance of the services shall:
   * 1. make every effort to cause as little interference with and inconvenience to the Contracting Authority's business and operations as reasonably possible; and
     2. at all times comply with the safety, security and other reasonable rules and regulations applicable to the Contracting Authority’s premises; and
     3. if required, take an oath of secrecy, sign a non-disclosure agreement provided by the Contracting Authority or any other similar undertaking as required by the Contracting Authority.
10. The Supplier agrees to comply with the policies of the Contracting Authority regarding access to its physical premises and automated systems, and any other rules, procedures and standards which are in force and notified to the Supplier within reasonable time. If the Contracting Authority changes its policies or any other rules, procedures and standards, the Contracting Authority will give the Supplier reasonable notice of any relevant change.
11. The Supplier shall obtain and maintain all approvals, permissions, permits and licenses required to comply with national laws and regulations that may be applicable for the provision of the Services.
12. The Supplier acknowledges that time is of the essence for the performance of its obligations under this Contract.
13. If applicable, the Supplier shall provide Maintenance Services from the Acceptance Date to meet or exceed the service levels as detailed in Appendix C (Maintenance and Support Services). If the Supplier believes that the service levels will not be met, the Supplier shall notify the Contracting Authority promptly of the likely failure and take all remedial action that is reasonable to rectify or to prevent the failure from taking place or recurring, without prejudice to any Penalties that are incurred by the Supplier for failure to achieve the service levels.

**Delay Payments and Penalties**

1. Without prejudice to Article 10 (Liability and Indemnity), the Suppler shall be liable to a penalty for mere delay of [insert amount in words and figures] per day of delay, up to a maximum penalty of [insert amount in words and figures], if any of the timeframes as detailed in Appendix A (Service Requirements) are not adhered to, unless the Contracting Authority is of the opinion that such delay has arisen from causes which were unavoidable and could not be foreseen or overcome by the Supplier, in which case the Contracting Authority shall decide the extent, if any, to which deduction shall be remitted. Provided that the Contracting Authority may, at its sole discretion, decide not to apply penalties but to recover the damages as set out in this contract or at law.
2. Where applicable, if at anytime the Supplier fails to meet the Service Levels set out in Appendix C (Maintenance and Support Services), the Supplier will pay the penalties to the Contracting Authority or the Contracting Authority may, at its option, withhold a sum equal to the penalties from any Charges due under this Letter of Engagement. If no further Charges fall due after Penalties accrue, the Supplier shall issue a credit note to the Contracting Authority for a sum equal to any such Penalties then outstanding which shall be repayable by the Supplier to the Contracting Authority as a debt.

**Charges and Payment Terms**

1. The Total Charges due to the Supplier by the Contracting Authority for the provision of the Service for the Term shall not exceed be [sum in words] (€ figures) exclusive of VAT. A detailed breakdown of the Charges is provided in Appendix A (Service Requirements and Charges). The charges are inclusive of any expenses, customs, duties or shipping costs incurred however are excluding VAT.
2. The Supplier shall issue an invoice [at the end of each month for the approved work], covering the hours worked and accepted by the Contracting Authority during that month. Payment of the charges shall be made within [sixty (60) days] from receipt of a valid invoice. The Supplier shall ensure that all payment details are to be included in the invoices.
3. No payment will be made for any part of the contractual obligations omitted because of a suspension required by the Contracting Authority as a result of any breach of contractual terms by the Supplier and neither will any additional payment be made for steps which the Contracting Authority reasonably requires the Supplier to take.
4. Payment of charges by the Contracting Authority is without prejudice to any rights or claims that the Contracting Authority may have against the Supplier and will not constitute any admission by the Contracting Authority as to the proper performance by the Supplier of its obligations under this Letter of Engagement.
5. In the event that the Contracting Authority breaches the payment timeframes, the Supplier would become entitled to the payment of interest at the rate established by law.

**Order of precedence**

If there is a conflict between this Letter of Engagement and the different appendices attached thereto, the conflict shall be resolved in accordance with the following order:

1. Letter of Engagement (excluding Appendices);
2. Appendix A: Service Requirements and Charges;
3. Appendix B: Service Terms and Conditions;
4. Appendix C: Maintenance and Support Services;
5. Appendix D: Data Processing Services;
6. Appendix E: Key Personnel;
7. Appendix F: Architecture Design and Specification

The Contracting Authority reserves the right to cancel or terminate this Letter of Engagement without written notice in the event that you are in breach of the terms and conditions agreed to in this Letter of Engagement, including, where the Supplier fails any of the grounds listed in Part VI (Exclusion and Blacklisting of Economic Operators) of the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta).

Kindly sign the attached duplicate of this letter as an indication of your acceptance of the terms contained herein.

Yours sincerely,

...........................................

[insert name]

[insert designation]

[insert Contracting Authority name]

**Acceptance**

I the undersigned agree to the contents of this letter of engagement.

|  |
| --- |
| ……………………………………  [insert name]  ID Card Number: [insert number]  Email: [insert email]  VAT Registration Number: ………....  Registration Self-Employed Number (if self-employed)………………..  Company Registration Number (where applicable)………....  Contact Person (Name and e-mail)...................................  Date: …………………………. |

Encl: Appendix A: Service Requirements and Charges

Appendix B: Service Terms and Conditions

Appendix C: Maintenance and Support Services

Appendix D: Data Processing Services

Appendix E: Key Personnel

Appendix F: Architecture Design and Specification

Appendix G: Performance Guarantee

**Appendix A – Service Requirements and Charges**

1. **Service Requirements**

[to include description of services as published in the Specific Contract document]

1. **Timeframes**

[to insert timeframes as specified in the Specific Contract document]

1. **Charges and Payment Terms**

[to include Financial Schedule as filled in by Supplier]

**Appendix B**

**TERMS AND CONDITIONS FOR PURCHASE OF SERVICES**

1. **DEFINITIONS**

‘Data Protection Legislation’ means the General Data Protection Regulation (EU) 2016/679 (GDPR), and the Data Protection Act 2018 (Cap 586) on the protection of natural persons with regard to the processing of personal data, and on the free movement of such data whether held electronically or in manual form.

'Intellectual Property Rights' shall mean copyrights, patents, trademarks, service marks, design rights (whether registered or unregistered), and all other similar intellectual or industrial proprietary rights;

'Price' means the price for the Services excluding VAT;

'Service' shall mean the service as detailed in the Letter of Engagement;

‘Source Code’ means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software.

1. **CONDITIONS APPLICABLE**

The parties acknowledge and agree that the provision of this Service does not create an employment relationship between the Supplier and the Contracting Authority.

This being a contract for Service, the Supplier is not entitled to any leave and/or sick leave or any other entitlements offered by the Contracting Authority to its employees or to any fee or compensation for absence due to illness, voluntary or statutory leave or public holidays.

1. **PROVISION OF SERVICES**

The Service shall be provided in accordance with best industry standards and practices and in accordance to the terms of the Letter of Engagement.

The Supplier shall comply at all times with all Government of Malta Information and Communication Technology (ICT) policies, directives, standards and associated publications, which can be found at [http://ictpolicies.gov.mt](http://ictpolicies.gov.mt/)

The Supplier shall at all times comply with the Contracting Authority’s policies, regulations and procedures. Particularly, the Supplier agrees to fully comply with the health and safety regulations, security standards and environmental protection.

The Supplier shall perform its obligations under this Contract, including those in relation to the Services in accordance with:

1. the security requirements set out in this Letter of Engagement;
2. Best Industry Practice;
3. the Supplier’s own established procedures and practices.

In the event that the Supplier fails to provide the Services or to comply with its obligations in accordance with this Letter of Engagement, the Contracting Authority may, without prejudice to its other rights in this Contract or at law, require the Supplier to rectify/re-perform Services or to comply with its obligations at no additional cost to the Contracting Authority.

The Supplier shall co-operate with the Contracting Authority and other relevant third-party providers to the Contracting Authority as and when required in order to ensure that the Contracting Authority is provided with the Services in accordance with the terms of this Letter of Engagement.

**Insurance**

The Supplier may be requested by the Contracting Authority to take out and maintain, for the duration of the Contract, comprehensive policies of professional indemnity insurance, insuring the Supplier for all sums that the Supplier may become obliged to pay as damages by reason of wilful default or negligence in the provision of Services to the Contracting Authority. Where the Contracting Authority requests the Supplier to take our such insurance policies in writing, the Contracting Authority may submit a request in writing to the Supplier requesting evidence of the existence of the insurances, including copies of the policy terms and evidence of the timely payment of premiums. The Contracting Authority may request the Supplier to amend any of these insurances when this is required to ensure compliance with this article.

**Verification and Checks by Auditing Bodies**

The Supplier will allow all auditing bodies identified by the Government of Malta or by an institution of the European Union to verify, by examining the documents or by means of on-the-spot checks, the provision of the Services and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the Contract. These inspections may take place up to 7 years after the final payment.

The Supplier will allow the auditing bodies to carry out checks and verification on the spot in accordance with the procedures set out in local legislation.

To this end, the Supplier undertakes to give appropriate access to staff or agents of the auditing bodies to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the provision of the Services and to take all steps to facilitate their work. Access given to agents of the auditing bodies shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Supplier must inform the Contracting Authority of their precise location.

The Supplier guarantees that the rights of the auditing bodies to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party.

The preceding paragraphs shall survive the expiry or termination of the Contract.

**Security Screening and Police Conducts**

The Supplier may be requested by the Contracting Authority, at any time during the Term, to provide copies of Police Conducts for its personnel involved in anyway whatsoever in the provision of the Services. Where Police Conducts are required, the Contracting Authority will inform the Supplier that Police Conducts are necessary in relation to the Supplier’s personnel and it will be the Supplier’s responsibility to provide the Contracting Authority with copies of the Police Conduct certificates, at its own cost, and which are dated not more than thirty (30) days from the date of the Contracting Authority’s written request.

The Supplier’s personnel (including personnel of any sub-contractors) involved in anyway whatsoever in the provision of the Services may be subjected to security screening procedures at any time during the term. The Contracting Authority shall inform the Supplier that such security screening procedures are necessary in relation to the Supplier’s personnel (including personnel of any sub-contractors). It will be the responsibility of the Supplier to carry out the security screening procedures, at its own cost, as advised by the Contracting Authority. The Contracting Authority shall also ensure the security clearance of personnel for the duration of the Letter of Engagement and shall make all necessary arrangements for any renewals required in case of impending expiry of the security clearance certificate awarded to its personnel.

Failure by the Supplier’s personnel to be security cleared or to provide Police Conducts as may be requested pursuant to the preceding Article will constitute ground for the Contracting Authority to reject the involvement of the personnel in the provision of the Services.

The Contracting Authority reserves the right to request a change in the Supplier’s personnel if there is unreasonable delay in providing copies of Police Conduct certificates and/or Security Screening certificates, as requested by the Contracting Authority, or it is evinced from the Police Conduct and/or Security Screening that the personnel proposed was convicted of a crime leading to him/her not being acceptable for providing the services, or not have obtained the required security clearance.

Repeated failure to provide copies of valid Police Conduct certificates and/ or Security Screening certificates within specified or reasonable timeframes, as may be requested pursuant to this Article, and/or repeated negative results arising from Police Conducts and/ or Security Screening certificates, will constitute grounds for the Contracting Authority to terminate the Contract on grounds of material breach.

**Performance Guarantee**

On endorsement of this Letter of Engagement, the Supplier shall deliver a duly executed performance guarantee in a form and from a bank acceptable to the Contracting Authority for the value of four percent (4%) of the total yearly value. The Contracting Authority shall adjust the value of Performance Guarantee after one (1) year from endorsement of this Letter of Engagement, and, thereafter, each year, which revision shall reflect the value of the Letter of Engagement for that year. The Performance Guarantee shall be attached as Schedule E.

The Contracting Authority reserves the right to cancel or terminate this Letter of Engagement in the event that the Supplier fails to provide this Performance Guarantee.

**Personnel**

The Supplier’s personnel (including sub-contractor’s personnel) involved in anyway whatsoever in the provision of the Service shall provide the Services with the care, skill and diligence required in accordance with the law and with the Best Industry Practice and shall have the necessary background, training, experience and ability to carry out their duties in a professional and proficient manner to the mutual understanding and reciprocal learning. Such personnel shall also have sufficient knowledge of the relevant aspects of the Service and of the practices of the Contracting Authority to enable them to properly perform the duties and responsibilities assigned to them in connection with this Contract.

Where the Contracting Authority is unsatisfied with the performance of any Supplier’s personnel or sub-contractor providing the Service to the Contracting Authority, the Contracting Authority shall immediately notify the Supplier giving reasons for its dissatisfaction, and the Supplier shall use its best endeavours to rectify the situation. For the purposes of this Article the performance of the employee or sub-contractor shall be deemed unsatisfactory, inter alia, where (i) such employee is incompetent; (ii) such employee is negligent in the performance of his duties; (iii) lacks the skills and experience required; (iv) his behaviour at the place of work is unacceptable or unsuitable. If the situation is not rectified by the Supplier within ten (10) calendar days from being notified by the Contracting Authority, the Contracting Authority reserves the right to request in writing a change of the individual concerned and the Supplier is obliged to carry out the necessary change within fifteen (15) calendar days from the written request.

The Contracting Authority also reserves the right to request a change in the Supplier’s personnel if there is unreasonable delay in providing copies of Police Conduct certificates and/or Security Screening certificates, as requested by the Contracting Authority, or it is evinced from the Police Conduct and/or Security Screening that the personnel proposed was convicted of a crime leading to him/her not being acceptable for providing the services, or not have obtained the required security clearance.

The Supplier acknowledges that specific personnel appointed by the Supplier are essential to the proper provision of the Services to the Contracting Authority (hereinafter referred to as “Key Personnel”) as listed in Appendix E (Key Personnel).

The Supplier shall procure that any sub-contractor shall obtain the prior written consent of the Contracting Authority before removing or replacing any member of the Key Personnel from their corresponding role during the Term, and, where possible, at least two (2) weeks written notice must be provided by the Supplier to the Contracting Authority of its intention to replace any member of Key Personnel from their corresponding role.

The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than is necessary and consequently undertakes that any Key Personnel requiring replacement shall be replaced within the shortest possible time period with person(s) as, or more, qualified and experienced as the previous incumbent of such role and fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.

The Contracting Authority may identify any of the roles performed by personnel of the Supplier as Key Personnel, who will then be included on the list of Key Personnel by the Supplier. The Contracting Authority may also require the Supplier to remove any member of the Key Personnel in accordance with the provisions of this Article without prejudice to the Supplier’s responsibility to perform its obligations as set out in this Contract.

The Contracting Authority shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Supplier shall indemnify the Contracting Authority against all liabilities arising from the employment or engagement of personnel by the Supplier that may arise in this respect.

**Documentation**

The Supplier shall furnish the Contracting Authority with the Documentation in English.

At the request of the Contracting Authority, the Supplier shall provide such additional copies of the Documentation as the Contracting Authority may require for the normal operation of its business.

The Supplier shall continue supplying any relevant Documentation existing from time to time, technical manuals and other Contracting Authority literature to the Contracting Authority. As a minimum, the combination of the manuals, technical documentation and other Contracting Authority literature provided hereunder and any training provided shall allow proper use, operation, administration and management of the Services by appropriately qualified personnel who have access to such documentation and who receive such training.

**Testing**

The Supplier shall carry out quality control and quality assurance processes at the premises of the Supplier, prior to the implementation to ensure that the requirements set out in Appendix A (Service Requirements) are met.

The Supplier shall provide to the Contracting Authority copies of all documentation relating to the preparation, conduct and results of the quality control and quality assurance processes carried out at the premises of the Supplier.

Following installation and configuration, the Parties shall prepare a test plan for the performance of the User Acceptance Testing (UAT) which shall include:

* + 1. a description of the performance of the UAT and the expected results of the tests;
    2. the acceptance criteria which shall as a minimum include the technical, functional and non-functional specifications agreed to between the Parties;
    3. the planned schedule with milestones to carry out the UAT;
    4. any resources required for testing purposes, including access to specific hardware or software;
    5. the input which may be required from the Contracting Authority;
    6. the test approach indicating (i) the new features to be tested (ii) regression testing and (ii) the features that will not be tested;
    7. the expected results of the tests to be carried out (‘Test Deliverables’);
    8. any dependencies and/or risks for the UAT;
    9. any criteria that will be applicable as agreed to by the Parties where the outcome of Test Deliverables is not as expected.

The Contracting Authority shall perform the UAT to determine whether the Service Deliverables meet the requirements set out in Appendix A (Service Requirements). If the Service deliverables fail to pass from the UAT, the Supplier shall, within ten (10) Working Days remedy the fault at its sole expense and re-submit for the performance of UAT.

Provided that the Supplier shall not submit the Service deliverables for UAT beyond the third iteration. Beyond such iteration, the Contracting Authority shall have the right, in such circumstances, to reject and/or terminate the Service on grounds of material breach.

The remedy provided for in the preceding Article shall be without prejudice to the Timeframes as detailed in Appendix A (Service Requirements). Following the lapse of the said time period, the Supplier shall be liable to the payment of Delay Payments in accordance with the provisions of this Letter of Engagement.

Where the Contracting Authority determines that the UAT has been successfully completed, the Contracting Authority shall issue the Acceptance Testing Report confirming that the Services successfully met all the testing criteria.

The costs in respect of the testing performed in accordance with these Articles and the UAT are deemed by the Parties to be included with the Charges as set out in Appendix A (Service Requirements and Charges).

The Supplier shall carry out quality control and quality assurance processes on the Updates and Upgrades at the premises of the Supplier as set out in this Article.

The Contracting Authority will not be obliged to accept delivery of any Update or Upgrade and will, in any event, have the right to test such Upgrade following delivery and installation of that Upgrade by the Supplier. The Supplier will, upon the request of the Contracting Authority, deliver to the Contracting Authority any amendments to the Documentation necessary to describe and enable proper use of the Upgrade.

The Update or Upgrade shall carry the same warranty period as set out in Article 6 of Appendix B (Service Terms and Conditions) if applicable. In the event that Incidents occur as a result of the installation of the Update or Upgrades, the Supplier will be responsible to provide Maintenance Services as set out in Appendix C (Maintenance and Support Services) at no extra cost to the Contracting Authority.

Notwithstanding the provisions of this Article, the Supplier shall remain solely responsible for its obligations under this Contract, including the responsibility for adhering to the requirements set out in Appendix A (Service Requirements and Charges) and compliance of the Services to any Policies and Procedures published by the Government of Malta.

**Project Management**

Where requested by the Contract Authority, the Supplier shall be responsible to manage the project. The Supplier’s appointed project manager(s) will also be responsible for the following activities:

* 1. Scope management;
  2. Resource management;
  3. Schedule management;
  4. Risk management;
  5. Change management;
  6. Communication management;
  7. Quality management;
  8. Financial Management in order to ensure that the project remains within the limits of the Charges set out in Appendix A (Service Requirements and Charges);
  9. Deployment.

The Supplier will execute and manage all project activities on an ongoing basis in accordance with the Best Industry Practice and with Supplier’s standard project management process and methodology. The Supplier will provide status on matters such as schedule, resources allocation, progress and manage project definition, project packaging and project execution.

The Supplier shall provide the ancillary services that are necessary during implementation.

**Knowledge Transfer**

During the Term, the Supplier shall:

1. transfer all training material and provide appropriate training to the Contracting Authority personnel;
2. provide for the transfer to the Contracting Authority, or to the Replacement Supplier, of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
3. provide the Contracting Authority with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the development, provision or management of the Services and who are employed or engaged by the Supplier or its Sub-contractors; and
4. Provide formal training sessions where Enhancements are introduced, as requested by the Contracting Authority.

To facilitate the transfer of knowledge from the Supplier to the Contracting Authority, the Supplier shall:

1. provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Contracting Authority, whenever so requested by the Contracting Authority; and
2. permit the Contracting Authority’s personnel to observe the operation and delivery of the Services through work shadowing when so requested by the Contracting Authority.
3. **REPORT ON PROGRESS**

Except as may be agreed otherwise, the Supplier may be requested by the Contracting Authority to provide it with a report of the Services performed at the end of each calendar month, detailing all hours worked in that calendar month.

1. **TIMESCALES AND DELAYS**

Timeframes for the delivery of the Services are of essence. The Supplier shall meet all deadlines as may be determined in Appendix A or by the Supplier and the Contracting Authority by agreement in writing. In the event of any failure by the Supplier to provide the Services as agreed with the Contracting Authority as a result of any act or omission of the Supplier, the Contracting Authority shall have the right to withhold payment of related charges until satisfactory performance, without prejudice to any other remedies of the Contracting Authority under this Letter of Engagement or applicable law. This provision shall not apply to any delay occurring as a result of force majeure or to the extent that the Contracting Authority or a third party acting on its behalf is responsible for the delay.

The Supplier is responsible to escalate any issues which may potentially impact the performance of the Services during the Term. In the event that the Supplier fails to inform the Contracting Authority of such issues and the Contracting Authority suffers any loss or damages due to the negative impact on the performance of the Services during the Term, the Supplier shall indemnify the Contracting Authority for the loss and damage incurred.

1. **WARRANTIES**

The Supplier represents and warrants that it has the know-how, qualifications, experience and the necessary ability to undertake the work required to perform the Services and that the Supplier shall provide the Services with the degree of diligence expected from a supplier in the business of providing similar services.

The Supplier represents and warrants that it is not impaired in any way from performing the Services.

The Supplier represents and warrants that it shall act at all times in good faith in its relations with the Contracting Authority and that it has advised the Contracting Authority fully of any conflict of interest of which it is aware regarding the Services as at the date of the Letter of Engagement and further undertakes to inform the Contracting Authority as soon as practicable of any conflict of interest regarding the Services of which it may become aware during the Term.

The Supplier represents and warrants that all necessary permits or licences required for the performance of the Services have been obtained. The Supplier shall indemnify the Contracting Authority against all actions, suits, claims, demands, losses, charges, costs and expenses resulting from his failure to perform the Services as requested by the Contracting Authority, or from failure to have the appropriate permits or licences required for the performance of the Services.

The Supplier warrants that the Software shall not infringe upon nor violate any patent, copyright, trade secret, or any right of Third Party, and shall not be libellous or otherwise unlawful. All Software will be currently supported versions of that Software and perform in accordance with its specification.

The Supplier warrants that the Software is licensed to the Government of Malta as the original licensee and end user is authorized to use the Software and that the manufacturer is notified of this licensing arrangement.

The Supplier also represents and warrants that it complies with all applicable laws and regulations. In particular but without limitation, the Supplier warrants that the legal relationship between the Supplier and the personnel nominated for the provision of the Service is in accordance with the minimum mandatory employment conditions prescribed by law.

The Supplier also warrants that it does not fail under any of the grounds listed in Part VI (Exclusion and Blacklisting of Economic Operators) of the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta).

1. **REVIEW AND ACCEPTANCE**

The duly authorised representatives of the Contracting Authority shall have the right, before affecting payment, to review the Service performed. Any review carried out by the Contracting Authority’s representative or any waiver thereof shall be without prejudice to other rights at law concerning obligations undertaken by the Supplier. The Contracting Authority may, by written notice to the Supplier, reject any part of the Service which fails to meet the requirements specified in the Letter of Engagement. Such notice shall be given within a reasonable time during or after the performance of the Service. If the Contracting Authority rejects any part of the Service pursuant to this condition, the Contracting Authority shall be entitled, (without prejudice to any other rights and remedies) to: (a) to cancel the Service and request refund of any payments made, if applicable; or to (b) request the Supplier to re-submit the Services compliant with the requirements of the Letter of Engagement and/or request a reduction in price reflecting the reduction in quality of the Service.

1. **PRICE AND TERMS OF PAYMENT**

The Price of the Service shall be based on a global sum up to the maximum value as stated in the Letter of Engagement. Notwithstanding the above, the Contracting Authority shall pay to the Supplier in addition to the agreed price a sum equivalent to the Value Added Tax chargeable on the value of the Letter of Engagement, if applicable. The Contracting Authority shall settle an undisputed invoice within the payment term stipulated in the Letter of Engagement running from acceptance of the Services and on receipt of the invoice issued by the Supplier. Unless otherwise authorized by the Contracting Authority, each invoice submitted by the Supplier must bear the reference number of the Letter of Engagement.

1. **INTELLECTUAL PROPERTY RIGHTS**

The Contracting Authority shall retain all Intellectual Property Rights in the Software including any materials and Documentation related thereto and which are owned by the Contracting Authority at the time of signature of the Contract and used in the course of the provision of the Service. Such Software including any materials and Documentation shall remain exclusively and solely owned by the Contracting Authority.

All data, information, text, drawings and other materials which are embodied in any electronic, optical, magnetic or tangible medium, and which are supplied to the Supplier by the Contracting Authority are the sole property of the Contracting Authority.

The Intellectual Property Rights of any new development, enhancements, update or upgrade and in all materials, written or machine-readable, developed by the Supplier under this Contract and in connection with the Software, shall be owned by the Contracting Authority. The Supplier shall assign to the Contracting Authority its entire right, title and interest in and to the enhancements developed by the Supplier during the term of this Contract and to do all acts necessary to confirm that absolute title in the enhancements including the transfer of the Source Code or rights of Third Party components and software libraries introduced into the Software by the Supplier. The scripts and documentation will become the property of the Contracting Authority and the Contracting Authority will have the right to give the Source Code to Third Parties.

Following the expiry of the term or the termination for whatever reason of the Contract, the Contracting Authority shall be entitled to request maintenance and support services, for the version of the Software in use by the Contracting Authority, from any Third Party, without the need of consent or approval from the Supplier.

Prior to the date of expiration or termination of this Contract, the Supplier shall deliver to the Contracting Authority all and any materials produced by the Supplier and all documents, papers, drawings, reports and similar documentation which are supplied by the Contracting Authority to the Supplier for the performance of the Services.

The Supplier shall not have the right to use any data, reports, works or other property referred to in this Article for its own purposes without obtaining the prior written consent of the Contracting Authority.

**Licence**

In the event that the Contracting Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term of the Contract to copy and use the Software and/or its Source Code solely to the extent necessary for the Supplier to provide the Services to the Contracting Authority in accordance with this Contract, the provisions of this Article shall apply. The Supplier shall not, and shall procure that any sub-contractor do not use the licensed materials for any other purpose or for the benefit of any person other than the Contracting Authority. In the event of termination or expiry of the Contract, the Supplier shall deliver to the Contracting Authority all material licensed to it pursuant to this clause.

The Supplier shall ensure that it shall use the licences solely to the extent necessary for it to provide the Services to the Contracting Authority, in accordance with this Contract and in accordance with the terms and conditions of the particular licences.

The Supplier shall not, and shall procure that any sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Contracting Authority. In the event of termination or expiry of the Contract, the Supplier shall deliver to the Contracting Authority all material licensed to it pursuant to this clause.

**Source Code**

Where applicable, the Supplier shall submit to the Contracting Authority a copy of the Source Code of Specially Written Software within [one (1) week] from the Go-Live Date and an updated version of the Source Code and Documentation (soft copy versions) following acceptance and prior to deployment of any Updates or Upgrades at no charge to the Contracting Authority. Scripts and installation deployment instructions have to be documented and provided to the Contracting Authority.

The Supplier shall restore the Source Code once a year, upon the request of the Contracting Authority, in order for the Contracting Authority to verify that the deposited Source Code is the updated version of the Source Code.

The Contracting Authority shall be entitled to use the Source Code in the event that the Supplier is unable or unwilling to continue providing the Post-Implementation Services to the Contracting Authority during the Term due to a circumstance which is not attributable to the Contracting Authority. In such an event the last version of the Source Code, scripts and documentation will become the property of the Contracting Authority and the Contracting Authority will have the right to give the Source Code to Third Parties to be able to continue maintaining the Solution.

**Use of Third-Party Software**

In the event that the Supplier uses Third Party Software that is owned by the Third Party and distributed through a commercial license to develop any Specially Written Software, the Supplier shall ensure that the license terms of such Third Party Software is in line with the License Terms provided.

In the event that the Supplier uses Third Party Software that is not owned by a Third Party and is distributed under a non-commercial license such as open source software or free software, the Supplier hereby agrees to give the full warranties and to provide Post-Implementation Services in accordance with the terms set out in this Contract and to indemnify the Contracting Authority for any loss or damages which may arise in connection with the use of the open source software, notwithstanding the exclusion or limitation of responsibilities, warranties and liabilities in the open source terms of use, even if the Contracting Authority has been made aware of these terms of use of the software.

**IPR Claim**

The Supplier will indemnify, defend and hold harmless the Contracting Authority in respect of all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) incurred by or awarded against the Contracting Authority in connection with any claim or action against the Contracting Authority by any Third Party that the use by the Contracting Authority of the Software used by the Contracting Authority by virtue of this Contract or the receipt of any Support Services provided by the Supplier infringes the Intellectual Property of that Third Party (hereinafter referred to as “IPR Claim”) and the Supplier will take all steps necessary to defend the IPR Claim.

The Contracting Authority agrees that:

1. it will notify the Supplier in writing as soon as reasonably practicable of any IPR Claim of which the Contracting Authority has notice;
2. it will not admit any liability or agree to any settlement or compromise of an IPR Claim without the prior written consent of the Supplier, which will not be unreasonably withheld or delayed;
3. the Supplier will be entitled to assume exclusive conduct of any proceedings or action, negotiate the settlement of the IPR Claim and of all discussions and dispute resolution efforts in connection with the IPR Claim; and
4. the Contracting Authority will, at the Supplier’s request and expense, give the Supplier all reasonable assistance in connection with the conduct of the IPR Claim.

If any IPR Claim is made or is likely to be made against the Contracting Authority, the Supplier shall be entitled at its own expense and option either:

1. To obtain for the Contracting Authority the right to continue using the Solution in accordance with this Contract; or
2. modify or replace the infringing part of the Solution so as to avoid the infringement or alleged infringement, without prejudice to the representations and warranties in this Contract in relation to all or any part of the Solution, and without diminishing or curtailing in any material respect the performance or functionality of the Solution as described in any relevant specifications.

The indemnity given under this Article will not apply to the extent that any infringement has arisen directly from any modifications of the Software and/or the Services which are not contemplated by this Contract and which are made by the Contracting Authority without the Supplier’s consent or authorisation.

The provisions of this Article shall apply during the term of the Contract and indefinitely after its expiry or termination to the extent permitted by law.

1. **LIABILITY AND INDEMNITY**

Without prejudice to any rights or remedies of the Contracting Authority, the Supplier shall at all times hold harmless and keep indemnified the Contracting Authority, its employees and agents from and against any and all claims, proceedings, judgements, costs (including legal fees) and losses wherever made or incurred arising directly or indirectly out of: (i) a failure by the Supplier to deliver any or all of the Services; or (ii) failure by the Supplier to comply with any or all the Terms set out herein and/or set out in the Letter of Engagement.

Provided that the liability and indemnity shall be limited to the total value of this Letter of Engagement, excluding VAT except for in the case of breach of Data Protection Legislation and/or Confidentiality by the Supplier in which case liability and indemnity shall be unlimited.

1. **CONFIDENTIALITY**

The Supplier shall, at all times keep confidential (and procure that its personnel and/or sub-contractors (if any) keep confidential) any information which may be acquired in relation to the affairs of the Contracting Authority and shall not communicate or divulge such information, whether directly or indirectly except with the consent of the Contracting Authority, to the extent permitted by law or where through no fault of that party the information becomes public domain.

The Supplier accepts that the provisions of the Official Secrets Act (Chapter 50 of the Laws of Malta) as amended may apply to the Supplier.

The provisions of this clause shall survive the termination of the Letter of Engagement for any cause whatsoever.

1. **FREEDOM OF INFORMATION**

The Supplier acknowledges that the Contracting Authority is subject to the requirements of the Freedom of Information Act and that the provisions of the Letter of Engagement are without prejudice to the obligations of the Contracting Authority under the said Act, the Code of Practice issued under the same Act and any subordinate legislation made under the Act from time to time and/or any decision issued by the Information and Data Protection Commissioner in relation to such legislation.

The Supplier shall provide assistance as necessary to enable the Contracting Authority to respond to a request for information within the twenty (20) Working Day time limit established under the Freedom of Information Act for compliance.

Where the Supplier processes information that is subject to the Freedom of Information Act (Cap. 496 of the Laws of Malta) on behalf of the Contracting Authority, the Supplier shall provide to the Contracting Authority a copy of the information in the form requested by the Contracting Authority within five (5) working days from receipt of the request.

Where the Supplier receives a request for information held on behalf of the Contracting Authority, the Supplier shall transfer such request to the Contracting Authority immediately, without delay.

Where a request is made for information that concerns the Supplier under the terms of the Contract, the Contracting Authority shall consult with the Supplier and the Supplier shall provide the Contracting Authority with a response within five (5) working days from receipt of the request.

Provided that where the Supplier does not respond within five (5) working days, the Supplier shall be deemed to tacitly consent to the disclosure of such information.

Provided further that the consultation shall be without prejudice to the rights and obligations of the Contracting Authority as set out in this Article.

The Contracting Authority shall be solely responsible to determine that the information requested:

* + 1. is exempt from disclosure in accordance with the provisions of the Freedom of Information Act (Cap. 496 of the Laws of Malta);
    2. is to be disclosed in response to a request for information made under the Freedom of Information Act (Cap. 496 of the Laws of Malta).

The Supplier shall ensure that all information produced during the term of the Contract or relating to the Contract is managed in accordance with information management best practices and shall permit the Contracting Authority to inspect all such information as may be requested from time to time. The information inspected shall be subject to confidentiality until such time that there is no obligation to disclose under the provisions of Freedom of Information Act (Cap. 496 of the Laws of Malta).

1. **ASSIGNMENT AND SUB-CONTRACTING**

The Supplier shall not, without the prior written consent of the Contracting Authority, assign, subcontract or otherwise transfer all or any of the obligations undertaken pursuant to this Letter of Engagement. Any attempted assignment, subcontract or transfer in breach of the provision of this Clause shall be null and void.

Notwithstanding the approval by the Contracting Authority of a sub-contractor, such subcontracting shall not relieve the Supplier from the obligations under the Letter of Engagement or impose any liability upon the Contracting Authority to any sub-contractor of the Supplier.

1. **TERMINATION AND CANCELLATION**

The Contracting Authority shall be entitled to terminate the Letter of Engagement by sending a written notice to the Supplier:

1. In the event that the Supplier is in material breach of any of its obligations under this Contract and fails to remedy such breach without reasonable justification within thirty (30) days from a written notice requested the remedy thereof.
2. If the Supplier fails to inform the Contracting Authority in writing of any changes in subcontracting. In such circumstance the Contracting Authority reserves the right to terminate the Contract without notice and the Supplier shall be liable to indemnify the Contracting Authority for any damages incurred arising from a breach of Data Protection Legislation and/or Confidentiality.
3. If the Supplier fails to achieve a Milestone by the relevant date.
4. Pursuant to Article 9 (Intellectual Property Rights and Indemnity) where a modification or replacement of an item or where procuring a license has not avoided or resolved an IPR Claim.
5. If as a result of a default by the Supplier of its obligations, the Contracting Authority suffers damages that exceed the total Contract value.

The Supplier may not terminate the Contract except in the event that the Contracting Authority is in delay in the payment of the Charges and remains so in delay for ten (10) Working Days after receipt of notice from the Supplier in writing requesting payment.

If the Supplier shall be guilty of any serious misconduct or fails to comply with applicable laws, the Contracting Authority shall be entitled to terminate the Contract without notice and without any payment and without prejudice to any rights the Contracting Authority may have against the Supplier arising out of such default. For the purposes of this Article, ‘serious misconduct’ shall mean ‘fraud, neglect or failure or refusal to carry out the Service’.

This Contract may be terminated by the Contracting Authority by giving the Supplier thirty (30) days notice in writing, if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the Supplier or if the Supplier is unable to pay its debts as provided in article 214 of the Companies Act (Cap 386 of the Laws of Malta).

This Contract shall be terminated by the Contracting Authority by sending a notice in writing to the Supplier in the event that the Supplier abandons the provision of the Service. The Supplier shall be deemed as having abandoned the provision of the Service if the Supplier fails to reply to the notice of termination referred to in this Article within a period of fifteen (15) calendar days by providing reasons for the failure to provide the Services.

The Contracting Authority shall be entitled to terminate the Contract at any time and for any reason or without reason provided a minimum of twenty (20) Working Day written notice is given to the Supplier. The Supplier shall be compensated by the Contracting Authority on a pro-rata basis for Services provided to the Contracting Authority’s satisfaction up to and including the date of termination.

Notwithstanding the provisions of this Article, the Supplier shall continue to be responsible for the quality of the Services provided up to such termination date.

Any expiration or termination of this Contract for any reason shall not affect any accrued rights, liabilities or remedies of either party, including those related to warranties and remuneration paid up to and including the date of termination, which may arise under this Contract.

Following notice of termination of this Contract, the Supplier will at the request of the Contracting Authority continue to provide the Service until the end of the Term or for such other period as the Parties may agree in accordance with the terms of this Contract.

The terms, conditions and warranties contained in this Contract, that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract, including but not limited to the terms concerning Supplier's warranties and the provision of the Services shall so survive the termination or expiration of this Contract.

1. **NON-EXCLUSIVE SERVICE**

The Letter of Engagement is for a particular and non-exclusive service and the Supplier acknowledges that it is not the exclusive Supplier and the Contracting Authority may at any time procure the same or similar Services from a third party.

1. **FORCE MAJEURE**

Neither party shall be responsible for the consequences of any failure to perform or default in performing any of its obligations under this Letter of Engagement if that failure or default is caused by any occurrence or circumstance reasonably beyond that party's control (Force Majeure Event). It shall not be considered to be a force majeure event nor shall either party be excused from liability for delay or failure to perform if that party is delayed or fails to meet its obligations under this Letter of Engagement as a result of failure by it sub-agents or sub-contractors unless such failure itself results directly from a force majeure event.

If either party considers that a Force Majeure Event has occurred which may affect the performance of its obligations it shall give notice to the other party immediately giving details of the nature, the probable duration and the likely effect of the circumstances.

If such Force Majeure Event persists for a period of thirty (30) days or more and such delay is reasonably anticipated that it may continue, the Contracting Authority shall be entitled to terminate the Letter of Engagement forthwith.

1. **WAIVER**

No waiver of the Letter of Engagement or part thereof, or of any rights or obligations of the Supplier shall be effective unless in writing and signed by the Contracting Authority.

No waiver, or breach of, or default of provision of the Letter of Engagement shall be deemed a waiver of any other provision or of any subsequent breach or default of the same provision of the Letter of Engagement.

1. **AMENDMENT**

This Letter of Engagement may be varied only by agreement in writing between the parties in accordance with the provision herein and no other action on the part of the parties shall be construed as acceptance of any conditions other than those agreed, either within this Letter of Engagement, or separately agreed in writing, whatsoever. No employee or agent of either party has authority to agree to any variation or addition to this agreement, unless such variation or addition is expressed in writing and signed off by authorized representatives of each party.

1. **GENERAL**

Any notice given pursuant to the Letter of Engagement must be in writing and may be sent by hand or by post to the address shown on the Letter of Engagement and shall be deemed to have been served four (4) working days from day of dispatch .

These Terms shall be governed by and interpreted in accordance with the laws of Malta. In case of dispute, the dispute shall be submitted either to the Courts of Malta or to an arbitration tribunal, in the case where the Parties by agreement decide to refer the dispute to arbitration.

**Appendix C – Maintenance and Support Services**

[Where no maintenance services will be required, remove text in the appendix and include the following: *No maintenance services will be required under this Letter of Engagement.*

Where maintenance services are required, highlighted text is to be reviewed and removed/ amended as required]

**Part A Maintenance Service**

**1. Principles**

This Schedule covers the provision of the maintenance and support services to be provided by the Supplier as part of this Contract

The Supplier is responsible for ensuring that the Services are documented, defined, monitored and reported on in accordance with the processes and operational and technical procedures set out in the Operations Manual. The Services shall consist of the following components, based on the ITIL Service Management standard:

1. Supplier’s Help Desk
2. Incident Management
3. Problem Management
4. Configuration Management
5. IT Change Management
6. Release Management
7. Capacity Management
8. Availability Management
9. Service Level Management
10. Business Continuity Management
11. Equipment Lifecycle Management.

**2. Maintenance Services**

Maintenance Services shall include the following services, as further detailed below:

1. Investigation, diagnosis and identification of alleged Incidents in the Solution, difficulties or problems associated with its operation, reported by the Contracting Authority to the Supplier’s Help Desk including restoration, calibration, testing, re-configuration and full validation of the Solution after recovery;
2. Notification to the Contracting Authority by appropriate means and the provision to the Contracting Authority of recommended Software Updates, modification and alterations to the Licensed Software (such notices being referred to herein as "Software Notices").
3. Software Updates, patches for updates aimed at correcting Incidents;
4. Software and Computing Resources Upgrades;
5. Provision of technical advice to the Contracting Authority regarding the operation of the Solution.

**2.1 Preventive Maintenance**

The Supplier will visit the Location not less than [number] times during each period of [number][months/weeks] to test the operation and functions and make necessary adjustments, repairs or replacements.

The Supplier’s visits will be made during the Coverage Hours agreed below, by prior appointment with the Contracting Authority. If it is more efficient and will cause less disruption to the Contracting Authority, the preventative maintenance may be carried out at the time of any corrective maintenance.

**2.2 Help Desk**

The Supplier will provide to the Contracting Authority such technical advice by telephone help desk, fax or mail as is necessary to resolve the Contracting Authority’s difficulties and queries in using the Solution. Advice by telephone help desk will be available continuously during Coverage Hours or as otherwise specified.

Helpdesk Contact Details: [*insert details*]

The helpdesk will be responsible for:

* + - 1. monitoring and tracking the progress of the Incident and keeping the user informed;
      2. supporting the Contracting Authority’s business operations;
      3. providing management information;
      4. representing the interests of users;
      5. providing information to users; and
      6. managing an incident control system, including arranging the dispatch of Supplier personnel, in order to restore normal operations of the Solution in accordance with the Service Levels set out below through:

1. documentation – recording all calls;
2. communication – alerting appropriate support staff of the Supplier to the Incident;
3. support – making an initial assessment to help users;
4. classification – comparing the Incident to others and escalating as appropriate;
5. investigation – investigating the Incident, with further diagnostic work carried out by specialist support staff;
6. resolution – restoring the operation of the Solution and recording all Incident control actions;
7. closure – formally closing the Incident.

Calls to the helpdesk shall be assigned a priority according to the Service Levels set out in Section 4 below.

**2.3 Corrective Maintenance**

When an Incident is recorded, Corrective Maintenance will include:

1. investigation of operational problems and, provision of advice on the likely cause and recommend a course of action or implement remedial measures;
2. investigation of data corruption and advice on the likely cause and, where possible, the rebuilding or restoration of the data from a full workable back-up that the Contracting Authority shall provide to the Supplier at the Supplier’s request;
3. where the investigation highlights that the Incident relates to Software, the Maintenance Service will include the provision of advice, Workarounds, specification, development, release and supervision or implementation of remedial measures;
4. the resolution of Incidents.

The Supplier shall provide Remote Support for any Incident or On Site support, at its discretion.

In providing Maintenance Services the Supplier shall provide, at the Supplier’s sole cost (i) any necessary replacement equipment or Spare Parts at the sole discretion of the Supplier, and (ii) the related installation services.

[In providing support in relation to the Computing Resources, the Supplier shall be entitled to use refurbished replacement Computing Resources or parts as long as it uses the same quality control procedures and warranties as for new parts.

All replacement equipment or Spare Parts shall be provided either on a “standard exchange” basis (i.e. the equipment or parts being refurbished to a condition that is in all relevant respects similar to that of new parts) or as new equipment or parts. Replaced equipment and parts shall become the Supplier’s sole property.

Without prejudice to the Supplier’s responsibility to provide the Computing Resources and Services in accordance with the terms of this Contract, the Supplier reserves the right to provide the Contracting Authority with “substantially equivalent” equipment, and Spare Parts. (Substantially equivalent shall mean any component which by vendor type is similar in technology and functionality).

The Maintenance Services do not include the provision of any accessories other than Spare Parts.

**2.4 Software and Computing Resources Upgrade**

The Supplier shall provide the Contracting Authority with one copy of each Software Update and/or Software Upgrade without additional charge, and once installed such Software Update and/or Software Upgrade shall be deemed part of the Software and shall then be maintained in accordance with this Contract at no additional cost.

The Supplier may, as part of the preventative maintenance service set out above, offer to the Contracting Authority any Upgrades to the Computing Resources.

The Supplier will ensure that all Upgrades to the Computing Resources proposed will be compatible with the rest of the Computing Resources.

The Supplier will provide the Contracting Authority with full details of all Upgrades, whether Software or Computing Resources Upgrade, and will set out as a minimum: (i) the nature of the Upgrade; and (ii) whether there is any risk that the Upgrade may have any adverse effects on the Computing Resources including, in particular, any expected degradation in performance; and (iii) sufficient information to enable the Contracting Authority to determine whether or not the Upgrade is appropriate for the Contracting Authority.

The Contracting Authority will not be obliged to accept delivery of any Software or Computing Resources Upgrade and will, in any event, have the right to test such Upgrade in accordance with the testing procedure set out in Article 6 (Testing) of the main Contract.]

**3. Service Levels**

**3.1 Incident Categorisation**

Incidents will be prioritised into Priority 1, 2, or 3 depending on the criticality/impact of the Incident. The Contracting Authority will determine the prioritisation of reported incidents. The Contracting Authority shall act reasonably and in good faith, in the determination of the priority of each Incident.

In the case were service has been restored through a Workaround, the Supplier has to Resolve the Incident within [insert number in days or as agreed to with the Contracting Authority*]* (the “Resolution Time”).

The Service Levels for the respective Incident categories is presented in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| Incident Severity | Incident description | Response Time | Restoration Time |
| High (Critical)  (Priority 1) | Entire Solution is unavailable or the Solution or component thereof is completely inoperable impeding service provision  or  Breach of Security as defined in the Security Requirements Schedule | [time] | [time] |
| Medium  (Priority 2) | Business critical system function or group of functions of the Solution is unusable, inaccessible or not operating correctly | [time] | [time] |
| Low  (Priority 3) | Non business critical system function or group of functions of the Solution is unusable, inaccessible or not operating correctly | [time] | [time] |

Table 4.1 – Service Levels for Incidents

[The Contracting Authority may raise any Incident (Priority 1, 2 or 3) at any time provided that the Service Levels detailed in Table 4.1 above shall commence and apply only during the Normal Working Hours. In the event that the Solution is not restored during Normal Working Hours, the Restoration Time shall be suspended and shall continue to run on the next Working Day.]

Penalties will apply where the Restoration Time and Resolution Time has not been achieved. No penalties will apply to the non-achievement of the Response Time.

For Priority 1 and 2 Incidents the Supplier will assess the nature of the Incident and the degree of difficulty in providing a Resolution. On an issue-by-issue basis and no later than the Resolution Time , the Supplier will notify the Contracting Authority of the proposed Resolution of the Incident and will agree with the Contracting Authority the proposed actual time for the Resolution of the Incident, such timeframe not to be unreasonably rejected by the Contracting Authority. Penalties will apply where the agreed time for the Resolution of the Incident has not been achieved.

Where Restoration or Resolution is delayed because of information or assistance requested from the Contracting Authority has been delayed, the Supplier’s Restoration or Resolution time shall be suspended until the Contracting Authority responds to the request.

**3.2 Service Request Fulfilment Categorization**

The Service Levels for the following Service Request categories are as detailed in the table 4.2 below:

|  |  |  |
| --- | --- | --- |
|  | Acceptance Time by Supplier | Completion Time by Supplier |
| Account Management (Creation, deletion, modification of rights or accounts) | 1 hr | 7 hrs |
| Installations (Installation or un-installation of applications) | 4 hrs | 20 hrs |
| Reporting (Provision of standard reports) | 1 day | 4 days |
| Data Maintenance /  Ad hoc (Nonstandard maintenance requests or reports) | 2 days | 8 days |
| Complex (Requests that are complex and by nature take long particularly if there is a long service chain) | 2 days | 28 days |

Table 4.2 – Service Levels for Service Requests

The Acceptance Time detailed in Table 4.2 above is the period allocated for acknowledgement of the Contracting Authority’s request by the Supplier.

The Completion Time is the period allocated for the requested service to be completed by the Supplier.

SLAs for Service Requests shall apply from [7:45am to 5:15pm CET from Monday to Friday (excluding Public Holidays in Malta)] unless the Parties agree otherwise

Where the Supplier is unable to fulfil the Contracting Authority’s request within the Request Completion Time because required information or assistance requested from the Contracting Authority has been delayed, the Request Completion time shall be suspended until the Contracting Authority responds to the request.

**3.3 Coverage Hours**

The Supplier will provide the Maintenance Services during the following times: [insert time and applicable days].

**3.4 Penalties**

The Supplier will include all necessary detail in their monthly reports to enable the Contracting Authority to determine the Service Levels achieved and calculate any applicable penalties.

If the Solution is inoperable due to faults in the services provided for more than the stipulated Service Levels, then the Contracting Authority reserves the right to impose a penalty of [amount] Euro (€ [amount]) per hour or part thereof. [The penalty shall be capped to the value of [amount]]. Service Level measurements and calculations will be based on the date and time when an incident was formally raised, and on the date and time when the incident was certified as solved and completed.

If a Critical fault is not resolved within the stipulated Service Level, the Contracting Authority may resort to other alternatives to remedy the situation to continue the operations. In such cases, the expense involved for this operation shall be total borne by the Supplier [but will be capped to [amount] for the Services].

If at any time the Supplier fails to meet the Service Levels set out in Section 4.1 above, the Supplier will pay the penalties to the Contracting Authority or the Contracting Authority may (at its option) withhold a sum equal to the penalties from any Charges due under this Contract. If no further Charges fall due after Penalties accrue, the Supplier shall issue a credit note to the Contracting Authority for a sum equal to any such Penalties then outstanding which shall be repayable by the Supplier to the Contracting Authority as a debt.

In the case of a breach in the availability of the SLAs for the Service Request as set out in Table 4.2 above, the Contracting Authority may apply a penalty of [amount] € [amount] per hour or day in breach thereof over such time when the SLAs of the Service Requests are not achieved. [The maximum penalty shall be not exceed [amount] for each Service Request.]

The penalties will be an abatement of the Charges payable by the Contracting Authority in respect of the maintenance and support services and are without prejudice to any other rights or remedies that the Contracting Authority may have in respect of any failure by the Supplier to perform its obligations in accordance with the terms of this Contract. Any penalties paid will not relieve the Supplier from its obligations to perform the Services nor from any other liability under this Contract. Provided that the Contracting Authority may, at its sole discretion, decide not to apply penalties but to recover the damages as set out in this Contract or at law.

The failure to meet the same Service Level for [insert number of occurrences] shall constitute grounds for material breach of the Contract.

The Contracting Authority may, at its sole discretion, decide not to apply the penalties for breach of service levels but to recover the damages as set out in this Letter of Engagement or at law.

**3.5 Downtime**

Subject to the prior written agreement of the Contracting Authority, which shall not be unreasonably withheld or unreasonably delayed, downtime will be scheduled based on planned implementation of releases, upgrades, emergency fixes and/or other interventions required to maintain the applications and corresponding infrastructure. Both Parties will agree in advance on scheduled downtime through a change management process.

**Appendix D – Data Processing Services**

If no processing of personal data will take place include the following text:

*For the purpose of this Appendix the terms “Personal Data” and “Processing” shall have the same meaning as set out in the Data Protection Legislation. The Supplier shall not Process any Personal Data under this Contract.*

If Processing of personal data will take place, the appendix is to be retained as is and Annex A must be filled in with the relevant details.

**Preambles**

* + 1. Where the Customer requires the Contractor to provide the Customer with data processing services as part of the obligations of the Contractor pursuant to this Contract.
    2. Whereas the Contractor is willing to provide these Services to the Customer.

1. **Definitions**

**‘Business Purpose/ Purpose’** means the purpose/s specified in Annex A (Purposes for which the Data Processor may process Personal Data).

**‘Confidential Information’** means such data as defined in Clause 6 of this Schedule.

**‘Data Protection Legislation / Data Protection Regime’** means the General Data Protection Regulation (EU) 2016/679 (GDPR), and the Data Protection Act 2018 (Cap 586) on the protection of natural persons with regard to the processing of personal data, and on the free movement of such data whether held electronically or in manual form.

**‘Data Controller / Controller’** shall have the same meaning of ‘controller’ as set out in the GDP Regulation.

**‘Data Loss Event’** means any event that results, or may result, in unauthorised access to Personal Data held by the Data Processor under this Schedule and/or actual or potential loss and/or destruction of Personal Data in breach of this Schedule, including any Personal Data Breach.

**‘Data Processor / Processor’** shall have the same meaning of ‘processor’ as set out in the GDP Regulation.

**‘Data Processor System’** means the information and communication technology used by the Data Processor in the provision of the Service.

**‘Data Protection Impact Assessment’** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**‘Data Subject’** shall have the same meaning of ‘data subject’ as set out in the GDP Regulation.

**‘Data Subject Access Request’** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**‘Personal Data’** shall have the same meaning of ‘personal data’ as set out in the GDP Regulation.

**‘Personal Data Breach’** shall have the same meaning as set out in the GDP Regulation.

**‘Process’** shall have the same meaning of ‘processing’ as set out in the GDP Regulation.

**‘Protective Measures’** means the measures to be taken by the Data Processor in line with Article 32 of the GDP Regulation to protect against Personal Data Breaches, including technical and organization measures which may include pseudonymizing and encrypting, measures to ensure confidentiality, integrity availability and resilience of systems and services, and measures to ensure that availability of and access to Personal Data can be restored in a timely manner after an incident, and measures to regularly assess and evaluate the effectiveness of the measures adopted by it.

**‘Service’** means the service to be provided by the Contractor to the Customer as detailed in the main Contract.

**‘Sub-Processor’** means any third party appointed to process Personal Data on behalf of the Data Controller related to the Contract.

**‘Software’** shall have the same meaning as defined in the Contract.

1. **Scope** 
   1. The Parties agree that the terms and conditions set forth in this Schedule shall regulate the transfer and processing of Personal Data from the Data Controller to the Data Processor.
2. **Data Protection Obligations**

**Processing**

* 1. The Parties acknowledge that for the purposes of the Data Protection Regime, the Customer is the Data Controller of the Personal Data and the Contractor is the Data Processor.
  2. The Data Controller hereby authorises the Data Processor to process Personal Data only to the extent, and in such a manner, as is necessary for the Business Purpose and in accordance with the instructions as detailed in Annex A and subject to the security measures as detailed in the Contract. The Parties will ensure that any amendments to these Annexes are to be carried out through a contract amendment. The Data Processor shall not process Personal Data for any other purpose or without any specific written instructions from the Data Controller.
  3. The Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction of the Data Controller infringes the Data Protection Regime.

**Access to Personal Data**

* 1. The Data Processor shall ensure that access to the Personal Data is limited to:
     1. those employees who need access to the Personal Data for the Purpose identified in Annex A; and
     2. provided that such employee is granted access only to such part or parts of the Personal Data that is strictly necessary for performance of that employee's duties.
  2. The Data Processor shall ensure that all employees:
     1. are informed of the confidential nature of the Personal Data;
     2. have undertaken training in the laws relating to the handling of Personal Data; and
     3. are aware both of the Data Processor’s duties and their personal duties and obligations under the Data Protection Regime and this Schedule.
  3. The Data Processor shall take reasonable steps to ensure the reliability of any of its employees who have access to Personal Data.
  4. Where the Data Controller is not satisfied with the performance of the Data Processor’s personnel providing the Service, the Data Controller shall immediately notify the Data Processor in writing giving reasons for its dissatisfaction, and the Data Processor shall use its best endeavours to rectify the situation. For the purposes of this clause the performance of the employee shall be deemed unsatisfactory, inter alia, where: (i) such employee is incompetent; (ii) such employee is negligent in the performance of his duties; (iii) lacks the skills and experience required; or (iii) his behaviour at the place of work is unacceptable or unsuitable.

**Data Protection Impact Assessment**

* 1. The Data Processor shall, as requested by the Controller, provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data processor and after taking into account the nature of the processing and the information available to the processor, include: (a) a systematic description of the envisaged processing operations and the purpose of the processing; (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services; (c) an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

**Data loss Event and Personal Data Breaches**

* 1. The Data Processor shall immediately inform the Data Controller of any Data Loss Event, Personal Data Breach(es) and/or if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable in the course of providing the Services in accordance with this Schedule.

**Transfer of Data outside the EU**

* 1. The Data Processor shall not transfer Personal Data outside the EU unless the prior written consent of the Data Controller is provided.

**Data Subject Requests**

* 1. The Data Processor shall notify the Data Controller immediately if it:
     1. receives a Data Subject Access Request (or purported Data Subject Access Request);
     2. receives a request to rectify, block or erase any Personal Data;
     3. receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
     4. receives any communication from the Data Protection Commissioner or any other regulatory / supervisory authority in connection with this Schedule; and
     5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purports to be required by law.

The Data Processor’s obligation of notification as detailed in this Clause shall include the provision of further information to the Data Controller in phases, as details become available.

3.12 The Data Processor shall provide the Data Controller with full assistance including by promptly providing:

* + - 1. details and copies of the complaint, communication or request;
      2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
      3. the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
      4. assistance as requested by the Controller following any Data Loss Event;
      5. assistance as requested by the Controller with respect to any request from the supervisory authorities.

**Assistance and Collaboration**

* 1. The Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with the Data Controller and Data Processor’s obligations laid in the GDP Regulation. The Data Processor shall ensure that it co-operates with any supervisory authority as necessary.

4. **Warranty**

* 1. Each party warrants to the other that it will process the Personal Data in compliance with the Data Protection Regime and all applicable laws, enactments, regulations, orders, standards and other similar instruments.

1. **Security and Auditing**
   1. The Data Processor shall assist the Data Controller in ensuring compliance with the obligations as detailed in Articles 32 to 36 of the GDP Regulation, taking into account the nature of processing and the information available to the Data Processor.
   2. The Data Processor warrants that, having regard to the state of technological development and the cost of implementing any measures, it will take Protective Measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of or damage to Personal Data to ensure a level of security appropriate to:
2. the risk of and/or the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
3. the nature of the data to be protected including, but not limited to, the security measures set out in the Contract.
   1. The Data Processor shall create and maintain complete and accurate records as detailed in Article 30 of the GDP Regulation.
   2. The Data Processor shall make available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.
4. **Confidentiality Obligations** 
   1. The Data Processor acknowledges that the Personal Data is Confidential Information.
   2. The Data Processor shall not:

* + 1. make copies of the Personal Data, unless approved in writing by the Data Controller;
    2. extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Personal Data other than for the Business Purpose; or
    3. disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
  1. The Data Processor may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, as far as it is legally permitted to do so, it gives the Controller as much notice of the disclosure as possible.
  2. The Data Controller reserves all rights in its Confidential Information. No rights or obligations in respect of Confidential Information, other than those expressly stated in this Contract, are granted to the other party, or are to be implied from this Contract.
  3. The provisions of this clause shall continue to apply after termination of this Contract.

1. **Indemnity**
   1. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this Contract.
2. **Appointment of Sub-processors**
   1. The Data Processor shall not employ any sub-processors to assist it in the data processing activities as detailed in this Schedule unless it has the prior written consent of the Data Controller.
   3. If the Data Controller consents in writing to such sub-processors, the Data Processor shall ensure that any sub-processor’s agreement shall be:
      1. on terms which are substantially the same as those set out in this Schedule; and
      2. terminated automatically on termination of this Contract for any reason.

Notwithstanding any consent granted by the Data Controller, the initial processor shall remain fully liable to the Data Controller for the performance of its sub-processor's obligations.

1. **Term and Termination**
   1. Any provision of this Schedule that expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.
   2. Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
   3. On any termination of this Contract for any reason or expiry of the Term:

(a ) the Data Processor shall as soon as reasonably practicable return (as directed in writing by Data Controller) all Personal Data. The Data Processor shall use reasonable commercial efforts to fulfill such request within ten working days (10) days of its receipt; or

( b) if the Data Controller elects for destruction rather than return of the materials the Data Processor shall ensure that all Personal Data is immediately deleted from the Data Processor System.

* 1. The Data Processor shall provide written confirmation (in the form of a signed letter) no later than fourteen (14) days after termination or expiry of the Contract of compliance with Clause 9.3.

**Annex A: Purposes for which the Data Processor may process Personal Data**

[Contracting Authorities are to liaise with their Data Protection Officer (DPO) to ensure the appropriate details are indicated below]

|  |  |
| --- | --- |
| Description | Details |
| Subject matter of the processing (i.e. why the data is being processed/purpose of the Contract) |  |
| Duration of the processing (e.g. throughout the Contract or until a particular phase is reached) |  |
| Nature and purposes of the processing  (i.e. why is it lawful to process such data: six lawful basis for processing (Consent/Contract/Legal Obligation/Vital Interests/Public Task/Legitimate Interest). What is important is that this processing is necessary.  If special category of data – you need to identify the general purposes for lawful processing as well as the special purpose for such processing). Same applies if we are processing criminal convictions – we need a specific reason. |  |
| Type of Personal Data  Personal Data is broadly defined as data from which a living individual can be identified or identifiable (by anyone), whether directly or indirectly, by all means reasonably liked to be used including names, location data and online identifiers.  Special Categories of personal data (special measures have to be taken with Sensitive Data): racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, health, sex life, genetic data or biometric data. |  |
| Categories of Data Subject  A Data subject is a natural person whose personal data is processed. Categories may include: patients/employees/students/users etc. |  |
| Plan for return and destruction of the data once the processing is complete (please refer to article 9). |  |

**Appendix E- Key Personnel**

[To include Key Experts Form and CVs provided by supplier, where applicable]

**Appendix F- Architecture Design and Specifications**

[To include architecture design and specifications, where applicable]

**Appendix G- Performance Guarantee**

[to insert Performance Guarantee as provided by Supplier]