|  |
| --- |
| *Letter of Engagement to be used for the leasing of scanners and printers including consumables under the DPS established for the leasing of the mentioned equipment. 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 to take account of the specific procurement requirements. Fields highlighted in yellow must be filled in/ removed accordingly and instruction notes highlighted in grey are to be removed prior to the issue of the Specific Contract. Fields highlighted in green are to be filled in after award of the Specific Contract.*  *No alterations/ deviations from the templates are permitted except where provided in the templates.* |

<Do not print this page>

[to insert Letterhead on first page]

Letter Ref: <insert number>

Date: <insert date>

<insert Supplier address>

Dear <insert name>,

**Letter of Engagement – Lease of [insert equipment type](Reference:** <insert reference number>**)**

Following the award of the Specific Contract for the Lease of [insert equipment type] for [insert Contracting Authority name], by virtue of this Letter of Engagement, [insert Contracting Authority name] (the ‘Contracting Authority’) wishes to engage [insert name of company] (the ‘Supplier’) to provide it with the Services as detailed in Appendix A (Service Requirements and Charges) and in accordance with the terms and conditions of this Letter of Engagement, including Appendix C (Terms and Conditions of Service) and Appendix D (Maintenance and Support) attached to this Letter of Engagement.

**Term**

The Term of this Letter of Engagement shall be for a period of [insert period] from the later date of signature of this Letter of Engagement for the delivery, installation, testing and commissioning of the Equipment, including acceptance of the Equipment, and subsequently the period of [five (5) years] for maintenance services from the date of the acceptance in writing by the Contracting Authority.

**Provision of Service**

1. The Supplier shall be responsible for the successful delivery, installation, testing and commissioning of the Equipment in accordance with the timelines as detailed in this Letter of Engagement and in line with the technical requirements as detailed in this Letter of Engagement. The Supplier is responsible to install the Equipment by connecting the Equipment to the network at the Location and install the required drivers on Contracting Authority workstations at the Location.
2. Without prejudice to the general liability provisions set out in this Letter of Engagement, the Supplier shall be liable to a penalty for mere delay of [fifty Euro (€50) per working day] from the Delivery Date if the provision of the Equipment is delayed, 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.
3. In the event that the Contracting Authority requires that the Equipment is moved from one Location to another, the Supplier is responsible for:

a) the transportation of the Equipment from one Location to another;

b) to reconnect the Equipment to the network at the new Location.

1. The Equipment shall at all times remain the property of the Supplier and the Contracting Authority shall have no title in or to the Equipment. The Contracting Authority shall have the possession, the right to use and enjoy the Equipment subject to the terms and conditions of this Letter of Engagement. The Supplier shall secure to the Contracting Authority the quiet enjoyment of the Equipment during the term of the Contract. The risk of loss, theft, damage or destruction of the Equipment shall remain with the Supplier.
2. On termination of the Letter of Engagement, the Equipment shall remain the property of the Supplier. The Supplier shall collect the Equipment from the Location at his expense, within [insert period] from the date of termination of the Letter of Engagement.
3. The Supplier shall, at no extra costs, provide all the Consumables required for the proper functioning of the Equipment, excluding copy paper, during the Term as set out in Appendix A (Service Requirements and Charges).
4. The Supplier shall furnish the Contracting Authority with Documentation in English upon delivery of the Equipment. The Supplier shall continue supplying any relevant Documentation existing from time to time. As a minimum, the combination of the Documentation and any training provided shall allow proper use, operation, administration and management of the Equipment and Services by appropriately qualified personnel who have access to such documentation and who receive such training. ‘Appropriately qualified personnel’ shall refer to a generally accepted level of ability, education and experience acquired by personnel following any training provided by the Supplier. At the request of the Contracting Authority, the Supplier shall provide such additional copies of the Documentation as the Supplier may require for the normal operation of its business.
5. During the Term, the Supplier shall be bound to affect at its own expense, all the repairs (including those arising from wear and tear) and preventive and corrective maintenance which may become necessary so as to ensure that the Equipment remains in a good condition and performs in accordance with the specifications as listed in Schedule A (Service Requirements and Charges), irrespective of whether these repairs are caused or arise due to any act or omission of the Contracting Authority or otherwise.
6. The Supplier endeavours to repair the Equipment at the Location. Should the Supplier need to remove the Equipment from the Location, the Supplier shall either make available the Equipment within the timeframes requested by the Contracting Authority or the Supplier shall provide the Contracting Authority with alternative Equipment, as further detailed in Appendix D (Maintenance and Support).
7. The Contracting Authority will use its best endeavours to afford to authorised personnel of the Supplier at all reasonable times and with prior agreement, which shall not be unreasonably withheld, access to its premises as may be necessary for the delivery of the Equipment and the provision of the services. The Contracting Authority shall have the right to refuse admittance to, or order the removal from, its premises of any person employed by or acting on behalf of the Supplier who, in the opinion of the Contracting Authority (which shall be final) is not a fit and proper person to be on its premises. The Supplier undertakes not to use this right in an unreasonable manner. The Supplier undertakes to replace such personnel without jeopardising the performance of the Letter of Engagement. Action taken under this provision shall forthwith be confirmed in writing to the Supplier by the Contracting Authority and shall not relieve the Supplier of its obligations under the Letter of Engagement.
8. The Supplier is responsible to escalate any issues which may potentially impact the Delivery Dates. 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 Delivery Dates, the Supplier shall indemnify the Contracting Authority for the loss or damage incurred. The Contracting Authority may, if it deems necessary for any valid reason, extend the Delivery Date as it may consider reasonable or proper. The Supplier shall be informed in writing of any such extension.

**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 for the delivery, however are excluding VAT.
2. Payment of charges by the Contracting Authority will be due to the Supplier in accordance with the terms of payment defined in Appendix A (Service Requirements and Charges). 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:**

In case of conflict between the terms of this Letter of Engagement and the Appendices, the following order of precedence shall apply:

1. The main text of this Letter of Engagement; and
2. Appendix A (Service Requirements and Charges);
3. Appendix C (Terms and Conditions of Service)
4. Appendix D (Maintenance and Support);
5. Appendix B (Supplier’s Technical Offer)

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>  Address: <insert address, if different from top of first page address>  Email: <insert email>  Contact number: <insert number>  VAT Registration Number (where applicable)………....  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: Supplier’s Technical Offer

Appendix C: Terms and Conditions of Service

Appendix D: Maintenance and Support

Appendix E: Guarantees

**Appendix A – Service Requirements and Charges**

1. **The Service**

[to insert service requirements as published in the Specific Contract document by the Contracting Authority]

1. **Training**

[to insert any training requirements as published in the Specific Contract Document]

1. **Technical Specifications**

[to insert hardware technical specifications as published in the Specific Contract document by the Contracting Authority]

1. **Charges and Payment Terms**

[to insert Price Schedule and payment and invoicing Terms as published in the Specific Contract Document]

**Appendix B- Supplier’s Technical Offer**

[to insert successful tenderer’s response to Cft]

**Appendix C- Terms and Conditions for Purchase of Services**

1. **DEFINITIONS**

‘Consumables’ means those parts of the Equipment which are worn out by usage and shall include but are not limited to toner, cartridges, drum and developer but excludes printing paper.

‘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.

‘Equipment’ means the [insert quantity] [insert equipment type]as listed in Schedule B (Supplier’s Technical Offer), all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for them;

'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;

‘Location’ means [insert address/es] or any other Location as directed by the Contracting Authority.

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

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

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 Supplier shall lease the Equipment to the Contracting Authority for use at the Location subject to the terms and conditions of this Letter of Engagement. The Supplier shall not, other than in the exercise of its rights under this Letter of Engagement or applicable law, interfere with the Contracting Authority’s quiet possession of the Equipment.

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.

**Insurance**

The Supplier shall be responsible to take out and maintain, for the duration of the Contract, an adequate insurance policy for the Equipment for the duration of the Term.

The Supplier may be requested by the Contracting Authority to take out and maintain, for the duration of the Contract, comprehensive policies of general liability insurance, insuring the Supplier for all sums that the Supplier may become obliged to pay as damages by reason of willful 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.

**Personnel, Security Screening and Police Conducts**

The Supplier shall provide to the Contracting Authority a detailed list of authorised personnel with names, job title, and telephone numbers that need to gain access to the Location and the Equipment. Whilst on the Location the Supplier and such authorised personnel shall at all times comply with the safety, security and other reasonable rules and regulations applicable at the Location and if required, take an oath of secrecy or any other similar undertaking as required by the Contracting Authority.

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

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.

[The following to be added if the Specific Contract is EU funded and the value of the Letter of Engagement exceeds €100,000 net of VAT and/or whose implementation is longer than four weeks]

**Pre-Financing Guarantee**

The Supplier shall provide a Pre-Financing Guarantee on the letterhead of a financial institution within seven (7) working days from the later date of signature of this Letter of Engagement. The Pre-Financing shall amount to [forty per cent (40%) or sixty per cent (60%)] of the Charges detailed in Appendix A (Purchaser Requirements and Charges).

The purpose of the Pre-Financing Guarantee shall be to secure any pre-financing payment effected by the Contracting Authority in favour of the Supplier against the proper performance of the Contract obligations.

The Pre-Financing Guarantee must remain valid until released by the Contracting Authority. Should a Pre-Financing Guarantee cease to be valid during its term, and the Supplier fails to validate it, the Contracting Authority shall either make deductions from future payments to the Supplier under the Contract up to the total of the payments already made or terminate the Letter of Engagement if in the opinion of the Contracting Authority such deduction is impracticable.

If the Purchase Order is terminated for any reason whatsoever, the Pre-Financing Guarantee may be invoked forthwith in order to repay any balance still owed to the Purchaser by the Supplier, and the guarantor shall not delay payment or raise objection for any reason whatsoever.

Unless otherwise instructed by the Contracting Authority, the Pre-Financing Guarantee shall remain in force until the issuance of the Acceptance Certificate by the Contracting Authority.

**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 per cent (4%) of the estimated yearly contract 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.

1. **RESPONSIBILITIES OF THE CONTRACTING AUTHORITY**

The Contracting Authority shall during the term of the Letter of Engagement:

(a) ensure that the Equipment is used only for the purposes for which the Equipment is designed, and operated in a proper manner in accordance with any written instructions provided by the Supplier;

(b) make no alteration to the Equipment without the prior written consent of the Supplier;

(c) keep the Supplier fully informed of all material matters relating to the Equipment;

(d) permit the Supplier or its duly authorised representative to inspect the Equipment at reasonable times, provided that the Contracting Authority is given five (5) working days prior written notice of such inspections, and for such purpose allow the Supplier or any of its duly authorised representative to enter the Location or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

(e) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Equipment;

(f) not use the Equipment for any unlawful purpose; and

(g) at the end of the Term or on earlier termination of this Letter of Engagement allow the Supplier or its duly authorised representatives access to the Location or any premises where the Equipment is located for the purpose of removing the Equipment.

The Contracting Authority undertakes to provide the Supplier with the necessary information in a timely manner if such information is necessary for the performance of the Service by the Supplier.

1. **TIMESCALES AND DELAYS**

Timeframes for the delivery of the Services are of the 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 warrants that itself and its resources are suitably qualified and experienced for the purposes for which the Supplier is required by the Contracting Authority.

The Supplier warrants that there are no faults or defects in the Equipment which prevent or diminish the use and enjoyment thereof. If the existence of such faults or defects in the Equipment is proved, the Contracting Authority may, at its sole discretion, demand either the dissolution of the Letter of Engagement , or that the Equipment is replaced with other equipment with the same specifications as listed in Schedule A (Service Requirements and Charges), or an abatement of the Charges.

The Supplier guarantees the availability of spare parts for the Equipment for at least three (3) years from the time that production of the Equipment or any of its part ceases.

The Supplier represents and warrants that it is not impaired in any way from performing the Services and as at the date of the Contract it has full capacity and authority to lease the Equipment and to enter into and to perform this Contract.

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 licenses 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 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 authorized 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 fixed as stated in the Letter of Engagement and may be increased solely by a written agreement by both parties. 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 INDEMNITY**

The Supplier shall fully defend and settle any claim against the Contracting Authority resulting from an alleged infringement of any Intellectual Property Rights furnished or used in the provision of the Services. The Supplier shall indemnify the Contracting Authority for all expenses incurred by the Contracting Authority and for all losses, costs and damages suffered by the Contracting Authority in any such claim.

All intellectual Property Rights in any specification, instruction, design or other material furnished to or made available to the Supplier by the Contracting Authority, shall remain vested solely in the Contracting Authority and the Supplier shall not, except to the extent necessary to execute the Service, use or disclose any such specifications, instructions, designs or other material (whether or not relevant to the Letter of Engagement).

Any new Intellectual Property Rights arising from the performance of the Services under the Letter of Engagement shall be vested in and become the property of the Contracting Authority. Save that nothing in this clause 9 shall be construed as affecting the ownership of Intellectual Property Rights in the intellectual property existing prior to the performance of the Letter of Engagement.

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 of the Equipment or to perform the repairs and 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 subcontractors (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. **DATA PROTECTION**

[In case of data processing, Contracting Authorities are to liaise with their Data Protection Officer (DPO) and to include the necessary provisions]

For the purpose of this Article 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.

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.

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 subcontractor, 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 subcontractor of the Supplier.

1. **TERMINATION AND CANCELLATION**

The Contracting Authority shall be entitled to terminate the Letter of Engagement:

1. in the event that the Supplier is in material breach of any of its obligations under this Letter of Engagement and fails to remedy such breach without reasonable justification within thirty (30) days from a written notice requesting the remedy thereof;
2. if the Supplier shall be guilty of any serious misconduct, the Contracting Authority may terminate the Letter of Engagement 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’;
3. 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). In such cases the Contracting Authority may terminate the Letter of Engagement by giving the Supplier thirty (30) days notice in writing; and
4. At any time and for any reason or without reason provided a minimum of twenty (20) working days 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.

The Supplier may not terminate the Letter of Engagement 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) days after receipt of notice from the Supplier in writing requesting payment.

Notwithstanding the preceding Articles, the Supplier shall continue to be responsible for the provision of the Services provided up to such termination date.

Any expiration or termination of this Letter of Engagement 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 Letter of Engagement.

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

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. **NON-EXCLUSIVE SERVICE**

This Letter of Engagement is for a particular and non-exclusive service. While the Contracting Authority may consider extending the scope and application of the Letter of Engagement, 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. **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 D– Maintenance and Support Services**

[Schedule to be amended according to specific procurement requirements. Sections highlighted in yellow may be removed/ amended as required. Instruction notes highlighted in grey are to be removed. All other sections are to be retained as is.]

**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 shall provide the Maintenance Services to resolve Incidents related to the Equipment and make such repairs and replacements of faulty parts and adjustments, including Equipment Updates and Upgrades, as may be necessary to maintain the Equipment in normal operating conditions based on the technical and the business specifications as detailed in the minimum requirements sections.

[The Contracting Authority follows the ITIL Service Management standard. The Services shall consist of the following components, based on the ITIL Service Management standard:

1. Incident Management
2. Problem Management
3. Configuration Management
4. IT Change Management
5. Release Management
6. Capacity Management
7. Availability Management
8. Service Level Management
9. Business Continuity Management
10. Equipment Lifecycle Management].

**2. Maintenance Services [to amend list of maintenance services as required]**

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

1. Investigation, diagnosis and identification of alleged Incidents in the Equipment, difficulties or problems associated with its operation, reported by the Contracting Authority to the Supplier including restoration, calibration, testing, re-configuration and full validation of the Equipment 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 Upgrades;]
5. Provision of technical advice to the Contracting Authority regarding the operation of the equipment;
6. Technical advice by telephone in relation to the Equipment;
7. Replacement of consumables (excluding paper) and any other spare parts required to maintain the Equipment in order and in good working condition. Easily replaced low value consumables shall be stored onsite and stock shall be replenished by the Supplier on the Contracting Authority’s request.

The Supplier shall provide any reasonable assistance requested on issues related to the configuration of the Equipment.

**2.1 Preventive Maintenance**

The Supplier will visit the Location [at such intervals as the Contracting Authority deems necessary in order to keep the equipment in good working order/not less than [number] times during each period of [number][months/weeks] to test the operation and functions of the Equipment and make necessary adjustments, repairs or replacements to keep the Equipment in good working order in accordance with Schedule A ( Service Requirements and Charges).

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 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. 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;
3. the repair of Faults.

The Supplier shall provide Remote or Onsite Support for any Fault, as required.

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.

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 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.

**[2.3 Software and Equipment Upgrade**

The Supplier, where applicable, 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 Equipment Upgrades.

The Supplier will ensure that all Equipment Upgrades proposed will be compatible with the rest of the Equipment.

The Supplier will provide the Contracting Authority with full details of all Upgrades, whether Software or Equipment 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 Equipment 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, where applicable, will not be obliged to accept delivery of any Software or Equipment Upgrade and will, in any event, have the right to evaluate such Upgrade. If the Contracting Authority wishes to evaluate an Upgrade it will notify the Supplier in writing. In such an event, the Supplier will promptly deliver to the Contracting Authority any amendments to the documentation necessary to describe and enable proper use of the Upgrade. Provided that this shall not apply with respect to internet downloadable updates.

**3. Service Levels**

* 1. **Reporting of Incidents**

The Contracting Authority and the Supplier will both appoint an owner for each reported Incident.

The Contracting Authority will raise an Incident via phone or in writing or by any other means of communication which may be agreed to. All Incidents raised via telephone must be subsequently confirmed and documented in writing, preferably by e-mail. The Supplier shall acknowledge an Incident report within [insert time] from being reported.

Incidents shall be reported by the Contracting Authority during [insert times, applicable days and any exclusions] on the email addresses and/or telephone numbers that are to be communicated by the Supplier in writing to the Contracting Authority within three (3) days from date of signature of the Letter of Engagement.

The Supplier shall communicate to the Contracting Authority any changes in the contact telephone number and/or email address specified.

The Supplier shall provide end of month reports which clearly indicate the number of incidents logged, the response and resolution time, and any breaches which may have occurred for the respective month.

* 1. **Service Level Definition for Incidents**

In case of malfunction of the Equipment, the Supplier is expected to attend to a call within [insert time] from notification during Coverage Hours and to solve the problem identified within [insert time] from notification, during Coverage Hours.

In case where a fault cannot be rectified within [insert time], the Supplier shall provide a temporary replacement for the Equipment within [insert time] from the date of the call logged, until such time as the fault will be resolved. The Replacement Equipment will be provided by the Supplier without any cost to the Contracting Authority.

[Where the Equipment cannot be repaired or where more than 3 (three) Faults have been reported within any given month, the Supplier shall provide a permanent replacement of the Equipment within [insert period] from the date of the call of the third Incident.]

Penalties will apply where the Supplier fails to resolve any fault within the specified Service Levels, as detailed in Section 5 below.

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

**3.3 Service Requests**

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

|  |  |  |
| --- | --- | --- |
|  | Acceptance Time by Contractor | Completion Time by Contractor |
| Account Management (Creation, deletion, modification of rights or accounts) | 1 hr | 7 hrs |
| Installations (Installation or un-installation of applications) | 4 hrs | 20 hrs |
| Replenish Consumables (toners, drums, developer, cartridges, excluding copy paper). | [time] | [time] |
| 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 3.3 – Service Levels for Service Requests

The Acceptance Time detailed in the table 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.

**4. Coverage Hours**

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

**5. 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.

The Supplier will become liable to a penalty for mere delay of [fifty Euro (€50) per hour per fault] for failure to respond within the Service Levels as detailed above. The monetary amounts associated with these penalties shall be credited to the Contracting Authority and offset against the invoice.

If the Equipment is inoperable due to faults in the Equipment for more than the stipulated Service Levels, then the Contracting Authority reserves the right to impose a penalty of [amount] Euro (€ [amount]) per day per fault per printer or part thereof. [The penalty shall be capped to the value of [amount] for that specific Hardware].

If at any time the Supplier fails to meet the Service Levels set out in Section 3.2 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 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.

The penalties 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 Letter of Engagement. Any penalties paid will not relieve the Supplier from its obligations to perform the Services nor from any other liability under this Letter of Engagement. 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 Letter of Engagement or at law.

In the case of a breach in the availability of the Service Levels for the Service Request as set out in Section 3.3 above, the Contracting Authority may apply a penalty of [amount] € [amount] per hour or day in breach thereof over such time when the Service Levels of the Service Requests are not achieved. [The maximum penalty shall be not exceed [amount] for each Service Request.]

Failure to meet the same Service Level for [number of occurrences] may constitute grounds for material breach of the Letter of Engagement.

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.

**Appendix E – Guarantees**

[to insert Performance Guarantee and Pre-Financing Guarantee (if applicable) as provided by the Supplier]