

PART 1 - SECTION C

**CONDITIONS OF SOFTWARE AND
HARDWARE MAINTENANCE AND SUPPORT**

CONTENTS

1. DEFINITIONS	3
2. SERVICES TO BE PERFORMED	6
3. SOLUTION MAINTENANCE AND SUPPORT	6
4. HARDWARE MAINTENANCE AND SUPPORT	8
5. EMERGENCY SERVICES	9
6. ADDITIONAL ITEMS	10
7. CHARGES FOR MAINTENANCE SERVICES	10
8. WARRANTY AND DEFAULT	10
9. CONTRACTOR'S RESPONSIBILITIES	11
10. SCHOOL'S RESPONSIBILITIES	13
10A. UNAUTHORISED CODE	14
11. INTENTIONALLY LEFT BLANK	15
12. PATENT, COPYRIGHT AND OTHER INDEMNIFICATION	15
13. SECURITY AND DATA BREACH PROCEDURES	15
14. FORCE MAJEURE	19
15. DURATION AND TERMINATION	20
16. INTENTIONALLY LEFT BLANK	21
17. LIST OF SCHEDULES	21
18. INTENTIONALLY LEFT BLANK	22
19. INTENTIONALLY LEFT BLANK	22
20. INTENTIONALLY LEFT BLANK	22
21. HARDWARE MAINTENANCE CHARGE	22
22. DOCUMENTATION AND DIAGNOSTIC ROUTINES	22
23. INTENTIONALLY LEFT BLANK	23
24. INTENTIONALLY LEFT BLANK	23
25. INTENTIONALLY LEFT BLANK	23
26. INTENTIONALLY LEFT BLANK	23
27. INTENTIONALLY LEFT BLANK	23
28. LIQUIDATED DAMAGES	23
29. LIST OF SCHEDULES	23

SCHEDULE

SCHEDULE 1:	List of Software and Hardware (To be supplied by the Contractor, Refer to Clause 17)
SCHEDULE 2 :	Preventive Maintenance Schedule (To be supplied by the Contractor, Refer to Clause 17)
SCHEDULE 3 :	Intentionally Left Blank
SCHEDULE 4 :	Liquidated damages

1. DEFINITIONS

1.1 These Conditions of Software and Hardware Maintenance govern the Maintenance of Hardware and System Software Maintenance and support for the proposed new network infrastructure equipment pursuant to **Part 2, Requirement Specifications** and equipment listed in **Part 2 Requirement Specification Annex B List of Existing Equipment: Firewall and Uninterrupted Power Supply**

1A.1 For avoidance of doubt, and subject to **Clause 1.2** below, where the Conditions of Software and Hardware Maintenance and Support apply, they shall apply in addition to and without prejudice to the provisions of Part 1, Section B (Conditions of Contract), including but not limited to the following terms and conditions in Part 1 Section B, which shall apply to and are incorporated by reference mutates mutandis, as if set forth at length in this Maintenance Contract:

Clause 13 - Contractor's personnel

Clause 31 - Documentation

Clause 32 - Liability of Contractor

Clause 34 - Relocation of Solution

Clause 35 - Language

Clause 36 - Losses

Clause 37 - Limitation of Liability

Clause 38 – Insurance

Clause 39 – Confidentiality

Clause 39A – Data Security and Protection

Clause 40 - Compliance with Law

Clause 41 – Sub-contract, Assignment, Transfer

Clause 43 - Public release of Information

Clause 44 – Gifts, Inducement and Rewards

Clause 45 – Applicable Law

Clause 46 – Variation of Contract

Clause 47 – Conditions not to be Waived

Clause 49 - Policy, Security and Audit

Clause 50 – Escalation of Disputes

Clause 50A – Dispute Resolution

Clause 51 – Advisor

Clause 52 - Correspondence

Clause 53 - Remedies

Clause 54 - Claims for Extra Work

Clause 55 – Mediation

Clause 56 – Contracts (Rights of Third Parties)

Clause 57 – Consortium

Clause 58 – Co-existence Strategy

Clause 59 - Ownership of Documentation and Disposal of Documentation upon Termination of Contract or Completion of Contract

Clause 60 - Set Off

Clause 61 - Entire and Whole Agreement

Clause 62 - Issuance of Written Warning by the School

Clause 63 - Liquidated Damages for Data and Security Breaches

[Optional] Clause 64 - Solicitation of Staff

1A.2 Any reference to:

(a) “**Contract**” in any terms and conditions incorporated under Clause 1A.1 shall be read as referring to “Maintenance Contract”.

(b) “**Contract Price**” in any terms and conditions incorporated under Clause 1A.1 shall be read as referring to “price of the Maintenance Contract.”

1.2 In the event of any conflict or inconsistency between Part 1, Section B (Conditions of Contract) and these Conditions of Software and Hardware Maintenance and Support in respect of the Maintenance Services, the latter shall prevail to the extent of the inconsistency.

1.3 In these Conditions of Software and Hardware Maintenance and Support, unless the context otherwise requires.

“**Documentation**” means all operating manuals, training materials, programs and associated documentation relevant to the Solution.

“**Emergency Services**” has the meaning given to it in **Clause 5.1**.

“**Hardware Maintenance Charge**” means the charge payable for Hardware Maintenance Service in relation to an item of Hardware.

“**Hardware Maintenance Service**” means the service provided by the Contractor as defined in the Requirement Specifications in **Part 2** of this Invitation to Tender.

“**Operating Hours**” means the scheduled operating hours of the Solution, begin from 0700 hours to 2400 hours every day from Monday to Saturday, but exclusive of Sundays and Public Holidays.

“**Remedial Support**” means the provision of services in attending to any defect, error or malfunction in the Solution, and includes the provision of the measures described in **Clauses 3.1.1(a) and 3.1.1(b)**.

“**Service Levels**” means the service levels or standards set out in these Conditions of Software and Hardware Maintenance and Support and the Requirements Specification, which the Software and Hardware are subject to, and “**Service Level**” shall be construed accordingly.

“**Solution Availability Level**” shall be determined according to the following

formula:

$$\frac{\text{Solution Availability Level}}{\text{Solution Availability Level}} = \frac{[\text{Operating Hours} - \text{Solution Downtime}]}{[\text{Operating Hours}]} \times 100\%$$

“Solution Downtime” means the accumulated time during which the Solution is not operating in accordance with the Requirements Specification except for occasions where the failure is due to factors for which the Contractor is not responsible or any planned downtime of the Solution that was mutually agreed to by the Parties as part of routine maintenance.

“Standard Correction” means a correction or update to the Solution that is meant to permanently rectify or correct a defect, error or malfunction in the Solution.

“Support Hours” means hours from 0700 hours to 2400 hours every day from Mondays to Sundays.

“Vulnerability” means any actual or potential vulnerability, exploit, flaw, threat or other security concern relating, directly or indirectly, to:

- (a) the Solution or any particular component of the Solution or its implementation into the School’s IT environment;
- (b) the School’s IT system or any particular component of the School’s IT system; or
- (c) the provision of the Maintenance Services or the operation of the Solution for or on the School’s IT environment,

which adversely affects, or may or has the potential to adversely affect the security of the Solution or any particular component of the Solution or the School’s IT system or environment, and **“Vulnerabilities”** shall be construed accordingly.

“Writing” includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered posted or transmitted electronically.

1.4 All other capitalised terms used in these Conditions of Software and Hardware Maintenance and Support shall have the same meanings as in Part 1, Section B (Conditions of Contract) unless otherwise defined or where the context otherwise requires.

1.5 All references to clauses, unless otherwise expressly stated, are references to

clauses numbered in these Conditions of Software and Hardware Maintenance and Support and not to those in any other document forming part of the Contract.

- 1.6 Where a clause number is quoted, then reference is being made to that clause bearing that clause number and to all the subclauses if any, under that same clause number (E.g. a reference to Clause 2 refers to Clause 2.1 and 2.2 inclusive of all their respective subclauses if any. A reference to Clause 2.1 refers to Clause 2.1(a) to 2.1(b) inclusive of all their respective subclause if any).

2. SERVICES TO BE PERFORMED

- 2.1 The Contractor shall provide maintenance and support services for the Solution, which shall include:
- (a) maintenance and support for the Software and any other application development software or tools listed in the **Schedule 1**; and
 - (b) maintenance and support for all the items of Hardware and any other hardware peripherals listed in the **Schedule 1**.

3. SOLUTION MAINTENANCE AND SUPPORT

3.1 Scope of maintenance and support

- 3.1.1 The Contractor's obligations in relation to maintenance and support of the Solution shall include the following obligations:
- (a) investigate any defects, errors or malfunctions in the Solution as may be reported by the School to the Contractor or otherwise known to the Contractor, and provide and implement any temporary corrections, solutions and bypasses to the defects, errors or malfunctions until such time as Standard Corrections become available;
 - (b) correct any defects, errors or malfunctions in the Solution as may be reported by the School to the Contractor or otherwise known to the Contractor;
 - (c) install, test and the implement standard corrections, supply and install new versions and new releases of the Software and update related documentation and materials;
 - (d) render advice on the performance tuning of all items of the Solution;
 - (e) recover any lost data, restore and repair any damaged data and, to the

maximum extent possible, correct any erroneous data;

- (f) restore the Solution to an operable state where Solution Downtime is attributable to any defect, error or malfunction in the Solution;
- (g) render advice and guidance to the School in the use of the Solution;
- (h) at the request of the School, provide training for the School's personnel in the use of the Solution;
- (i) inform the School of all future updates and new releases of the Software within one (1) week of their release for general distribution and, when so requested by the School, supply and install the relevant update and releases within four (4) weeks of receipt of the School's request;
- (j) provide the School with all necessary documentation needed for the maintenance of the Solution including all necessary updates of the same;
- (k) provide other software support services including technical advice and assistance as may be required by the School from time to time; and
- (l) at the request of the School, perform the required testing, recompilation, installation and any relevant works for the remediation of the Solution in the event remedies for any defects, errors or malfunctions in the software or infrastructure provided by the School are made available.

3.2 Remedial Support

3.2.1 The Contractor shall provide Remedial Support during Support Hours.

3.2.2 On the Contractor's receipt of information from the School of a defect, error or malfunction in the Solution, the Contractor shall immediately assign its personnel to access the Solution within two (2) hours from the time the Contractor received the information from the School to investigate such defect, error or malfunction.

3.2.2A On the Contractor's discovery of a defect, error or malfunction in the Solution, the Contractor shall immediately notify the School and upon the School's approval, immediately assign its personnel to access the Solution within two (2) hours from the time the Contractor discovered said defect, error or malfunction / the Contractor received the School's approval to investigate such defect, error or malfunction.

3.2.3 Time shall be of the essence in responding to calls for Remedial Support. The Contractor shall ensure that the response time stated in **Clause 3.2.2** is complied with and shall, if requested by the School, provide its personnel with mobile

devices (including but not limited to mobile phones) or any other equipment which the School may require to ensure that the response time is always complied with.

- 3.2.4 In relation to Software, where the Contractor is not able to remedy the defect, error or malfunction or successfully implement a temporary correction, solution or bypass in accordance with **Clause 3.1** within four (4) hours of accessing the Site, unless otherwise specified in the Requirements Specification, the Contractor shall, without any cost to the School, engage the services of an independent expert (who may be an employee or agent of the developers of the particular defective software), to remedy the defect, error or malfunction, or effect a temporary correction, solution or bypass. The independent expert shall arrive and commence work at the Site within four (4) days from the date the School requested for Remedial Support.
- 3.2.5 Immediately after such remedies are ready for implementation, the Contractor shall deliver to the School the corrected version of the object code of the Software in machine-readable form for loading on to the Hardware together with appropriate amendments to the Documentation, if any, specifying the nature of the correction and providing instructions for the proper use of the corrected version of the Software on the Hardware.

4. HARDWARE MAINTENANCE AND SUPPORT

4.1 Hardware maintenance and support shall include the following:

- 4.1.1 Routine preventive maintenance (i.e. maintenance of the Hardware in good working order) ("**Routine Preventative Maintenance**") including:
- (a) lubricating, cleaning and adjusting parts or devices of the Hardware;
 - (b) running diagnostic programs on the Hardware;
 - (c) the replacement, without cost to the School, whether in respect of labour or parts etc., where replacement is necessary for the normal functioning of the Solution; and
 - (d) any other test or adjustments necessary to keep the Hardware in the working order contemplated by the Requirements Specification.

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

4.1.2 In remedial maintenance (i.e. the correction of any failure or malfunction of the Hardware during the Support Hours)(**"Remedial Maintenance"**); the Contractor shall:

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

4.2 Any defective part removed from the Solution shall become the property of the Contractor when it is replaced by the Contractor at no cost to the School with a good workable part. For the avoidance of doubt, such defective parts may be required to be permanently and physically destroyed in accordance with **Clause 59 of Part 1, Section B (Conditions of Contract)**.

4.3 The Contractor may at its option, provided that the School's written consent has been obtained, at no cost to the School, make modifications to the Hardware to improve the operation or reliability of the Hardware.

5. EMERGENCY SERVICES

5.1 **"Emergency Services"** are Remedial Support for the Solution and Remedial Maintenance for the Hardware provided by the Contractor upon receipt of notification from the School outside the Support Hours that the Solution or the Hardware is defective or is malfunctioning.

5.2 The Contractor shall provide Emergency Services upon request by the School and **Clauses 3 and 4** shall apply to such Emergency Services.

5.3 Notwithstanding anything contained in this Contract, the School and the Contractor shall mutually agree on the scale of charges for Emergency Services under this Clause and in the absence of such agreement, the School shall pay the Contractor for Emergency Services in accordance with the Contractor's then

current charges for the same or similar services supplied at Fair Market Value.

6. ADDITIONAL ITEMS

- 6.1 The School may expand the scope of Maintenance Services to include additional items of software or hardware, whether or not these are included in the Solution. The Contractor's written consent would be required for any such item. All terms and conditions set out in the Contract relating to the Maintenance Services shall apply to these additional items.

7. CHARGES FOR MAINTENANCE SERVICES

- 7.1 Subject to the provisions of this Contract and the Contractor's due and timely performance of its obligations herein, the School shall pay the Contractor the charges for the Maintenance Services as specified in the **Part 3 Annex E Price Schedule**. The charges quoted shall be exclusive of GST on the services to be supplied by the Contractor. The School shall reimburse the Contractor any GST chargeable on the services.
- 7.2 All charges payable under this Maintenance Contract shall commence upon the expiry of the Software Warranty Period. Where any additional item is included within the purview of this Maintenance Contract pursuant to **Clause 6.1**, the additional charges payable in respect of those items shall be pro-rated on a daily basis for the period from the addition of those items to the next maintenance payment date for the Solution so as to be payable in future on the same date as the other items under the purview of the Maintenance Services.
- 7.3 The Contractor shall invoice the School for the Maintenance Services on a quarterly basis in accordance with such means and in such format as may be specified by the School and the School shall pay the amounts due within thirty (30) days of receipt of each invoice. All invoices shall be drawn and all payments shall be made in Singapore Dollars. The invoices shall also specify any GST payable by the School.
- 7.4 Intentionally left Blank.
- 7.5 Intentionally left Blank.

8. WARRANTY AND DEFAULT

- 8.1 The Contractor warrants and undertakes that:-
- (a) all its personnel and those of its Sub-contractors or agents are suitably

qualified and competent to carry out the tasks required of it under this Contract;

- (b) it shall carry out its obligations in conformity with the generally accepted standards of skill, care and diligence appropriate to the nature of the service rendered;
- (c) That he has access to all necessary facilities and equipment to perform the Hardware Maintenance Service;
- (d) any equipment or material used by it, including debugging software, firmware or hardware, shall not interfere with the normal operation of the Solution during Operating Hours;
- (e) during the Maintenance Period, the Solution Availability Level shall not be less than ninety-nine per cent (99.9%) for each month or part of the month unless the Contractor can show evidence that the unavailability of the Solution is due to reasons not attributable to the Contractor; and
- (f) in the event it fails to comply with any of its obligations under the Contract and in particular the obligations under this **Clause 8.1**, the Contractor shall, without request, take immediate action to remedy the same without any cost to the School.

8.2 Where the Contractor fails or refuses to carry out its obligations under this Contract and, in particular, the obligations set out above in **Clause 8.1**, the School may itself employ and pay another party to undertake the performance of the obligation and the Contractor shall, without prejudice to the School's other rights and remedies in relation to the Contractor's default, bear any expense, cost, damage or loss which the School sustained on account of the Contractor's default. Any failure of the School to make any inspection or discover any defective work or any aspect of the Contractor's default shall not affect the Contractor's obligations under this Contract.

9. CONTRACTOR'S RESPONSIBILITIES

9.1 The Contractor shall maintain a log of all its activities at the Site relating to the Maintenance Services. The Contractor shall propose a format for the log and recommend procedures for its usage for the School's approval. The log will include but not be limited to the following:

- (a) the date and time the Contractor is notified of any defect for malfunction;
- (b) the date and time of arrival of the Contractor's personnel at the Site;

- (c) the item or part of the Software or Hardware subject to investigation;
 - (d) the total time the Solution or part thereof is made unavailable to the School;
 - (e) a description of defect(s), including cause(s);
 - (g) the corrective action taken by the Contractor, including temporary corrections, solutions and bypasses;
 - (h) the preventive action to be taken; and
 - (i) the tests performed and the results of such tests.
- 9.2 Where the Site is a physical site, the Contractor shall, following every visit to the Site by the Contractor's personnel, at its own expense and within a reasonable period of time, clear away and remove from the Site all surplus materials, rubbish and work of every kind and leave the whole of the Site clean and in workmanlike condition.
- 9.3 Where the Contractor is unable to rectify any defect, error or malfunction within twenty-four (24) hours from the time the Contractor is notified of the same, the Contractor shall immediately notify the School giving pertinent details including the time by which it expects to complete the rectification. The notice shall be for information only and it shall not by itself result in a waiver by the School of any rights or remedies the School is entitled to under the Contract.
- 9.4 Where the Contractor is obliged to provide Remedial Support for the Solution and Remedial Maintenance for the Hardware, the Contractor shall continue with its efforts in correcting or rectifying or implementing temporary corrections, solutions or bypasses to the defect, error or malfunction in the Software or the Hardware reported to it until such time as the defect, error or malfunction is corrected or restored such as to enable the Solution to operate in the manner contemplated in the Requirements Specification.
- 9.5 The Contractor shall, even where a defect, error or malfunction in the Solution is due to a factor for which the School is responsible, assist the School to correct or rectify the defect, error or malfunction if the School agrees to pay the Contractor its charges on the same basis as charges for Emergency Services.
- 9.6 Any software or equipment of any kind used by the Contractor to carry out its obligations shall be deemed to be included in the charges payable for such services and shall not interfere with the normal operations of the Solution. Any debugging tools which are used by the Contractor and incorporated into the Solution shall be deemed to be a supply of such tools (as part of the Solution) to the School.

- 9.7 The Contractor shall, at the request of the School, assist and supervise the dismantling, packing, unpacking, inspection, re-configuration and re-installation and verification of the Solution or part thereof where the Solution or part thereof is moved from one location to another in Singapore provided that the School has given at least thirty (30) days' notice of its intention to move the Solution or part thereof to the Contractor.
- 9.8 The Contractor shall fully comply with any written instructions on information security matters (including IT Security Best Practices) that may be issued by the School.
- 9.9 The Contractor shall provide local support for the Solution.

10. SCHOOL'S RESPONSIBILITIES

- 10.1 During the period under which the Maintenance Services are being provided by the Contractor, the School shall:-
- (a) ensure that proper environmental conditions are maintained for the Solution and shall maintain in good condition the accommodation of the Hardware, the cables and fitting associated with the Hardware and the electricity supply to the Hardware;
 - (b) provide the Contractor reasonable access to the Solution to enable the Contractor to carry out its obligations provided that such access shall not interfere with the normal operations of the School;
 - (c) not make any modification to the Solution without the Contractor's prior written consent except for:
 - (i) modifications made in accordance with documentation provided by the Contractor;
 - (ii) modifications to the Solution to enable it to meet the Requirements Specification or such additional requirements as may be agreed between the School and the Contractor;
 - (iii) configuration of the Solution;
 - (iv) modifications made in accordance with provisions set out in the Contract;
 - (v) installation of approved software into the Solution; or

- (vi) installation of software or types of software which the Solution is intended to work with;
- (d) operate the Solution in a prudent manner in accordance with the standard instructions of the manufacturers of the Solution or the advice of the Contractor;
- (e) not attempt to adjust, repair or maintain the Solution nor request, permit or authorise any person other than the Contractor or persons approved by the Contractor to carry out adjustments, repair or maintenance to the Solution; and
- (f) promptly notify the Contractor if the Software or Hardware or the Solution as a whole requires maintenance or is not operating correctly.

10A. UNAUTHORISED CODE

10A.1 The Contractor warrants that at the time of the performance of any Maintenance Services, all magnetic or other storage media and other materials capable of being stored on such media:

- (i) supplied as a software or part thereof or with any software; or
- (ii) used in the performance of any Services;

shall not contain any Unauthorised Code.

10A.2 Prior to and at the time of performance of any Maintenance Services, the Contractor shall conduct a complete and thorough scan for Unauthorised Code using a reliable anti-virus software package(s) on all software and materials provided as part of the Maintenance Services.

10A.3 In the case of breach of **Clause 10A.1** above, unless the Contractor can prove that the Unauthorised Code was not attributable to the Contractor or its employees:

- (a) the Contractor shall indemnify the School fully against all costs incurred by them in the course of or incidental to removing the Unauthorised Code and recovering any lost or damage data or software; and
- (b) the Contractor shall pay the School a sum of Singapore Dollars One Thousand Six Hundred (S\$1,600) for each discovery as liquidated damages, being a genuine pre-estimate of the administrative costs (including costs arising from investigative efforts) occasioned by the discovery of an Unauthorised Code.

10A.4 If, after the performance of any Maintenance Services, the Solution is discovered to contain or be affected by any Unauthorised Code and it is shown that this was the result of any default of or negligent act or omission of the Contractor, its Sub-contractor, or their respective employees:

- (a) the Contractor shall indemnify the School fully against all costs incurred by them in the course of or incidental to removing the Unauthorised Code and recovering any lost or damage data or software; and
- (b) the Contractor shall pay the School a sum of Singapore Dollars One Thousand Six Hundred (S\$1,600) for each such discovery as liquidated damages, being a genuine pre-estimate of the administrative costs (including costs arising from investigative efforts) occasioned by the discovery of an Unauthorised Code.

10A.5 In this Clause:

- (a) a reference to the Solution or a part of the Solution includes a reference to any software installed as part of the Solution; and
- (b) “Unauthorised Code means any virus, Trojan Horse, worm, logic bomb or other software routine or hardware components designed to permit unauthorised access, to disable, erase, or otherwise damage software, hardware or data, or to perform any such actions.

10A.6 Where the administrative efforts (inclusive of investigative efforts) occasioned by the discovery of an Unauthorised Code under this Clause also constitute administrative efforts occasioned by a Security Breach Event under **Clause 63 of Part 1, Section B (Conditions of Contract)**, the higher of the two liquidated damages amount shall apply.

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12. PATENT, COPYRIGHT AND OTHER INDEMNIFICATION

12.1 Clause **33 of Part 1, Section B (Conditions of Contract)** shall apply to all modified versions of the Hardware and Solution as such clause is expressed to apply to the Hardware and Solution *mutatis mutandis* and the Parties hereby undertake to be bound by and to comply with the terms thereof accordingly.

13. SECURITY AND DATA BREACH PROCEDURES

13.1 The Contractor shall:

- (a) designate one of its employees to be the School's and Adviser's primary point of contact for all Security Breach Events and matters relating to Security Breach Events ("**Cyber-security Incident Management Personnel**");
- (b) during the first meeting between the Contractor and School, provide the School and Adviser with the name and contact details of the Cyber-security Incident Management Personnel; and
- (c) in the event the Cyber-security Incident Management Personnel is (i) away from work or out of Singapore for any duration or (ii) otherwise unavailable for any reason, designate another employee to perform his duties and functions.

13.2 The Contractor shall ensure that the Cyber-security Incident Management Personnel is available to render assistance to, and serve as the Contractor's point of contact for, the School and Adviser at all times (24 hours every day from Monday to Sunday, inclusive of public holidays).

13.3 The Contractor shall:

- (a) ensure that each and every Third Party Supplier notifies the Contractor in writing of any Security Breach Event, as soon as practicable after such Third Party Supplier becomes aware of, or has a reasonable basis to suspect the existence or occurrence of, any Security Breach Event; and
- (b) notify the School and Adviser in writing of any Security Breach Event:
 - (i) immediately upon receiving any notification of the Security Breach Event from a Third Party Supplier; and
 - (ii) in any case, as soon as practicable after the Contractor becomes aware of, or has a reasonable basis to suspect the existence or occurrence of, the Security Breach Event.

13.4 If there is any occurrence of a Security Breach Event, the Contractor shall, at no cost to the School:

- (a) upon such occurrence, immediately establish a communication channel between the School on one hand, and the Relevant Third Party Supplier (if any) on the other hand;
- (b) within forty-eight (48) hours of such occurrence, prepare and provide the School with an initial incident report ("**Incident Report**") in accordance with Clauses 13.5 and 13.6, for the School's written approval;
- (c) respond promptly to any query that the School may have in connection

with the Security Breach Event or the Incident Report;

- (d) upon the School's written approval of the Incident Report, use its best endeavours to (i) remedy and (ii) ensure that the Relevant Third Party Supplier (if any) remedies the Security Breach Event, including:
 - (i) assisting the School with any investigation into the Security Breach Event;
 - (ii) providing the School with physical access to any Site, where reasonably possible;
 - (iii) facilitating interviews with the officers, employees or agents of the Contractor and any Sub-contractor and, where reasonably possible, the Relevant Third Party Supplier (if any);
 - (iv) making available all records, logs, files, data reports and materials as the School may require that may be relevant to any investigation of the Security Breach Event and allowing the School to make copies of the same upon request;
 - (v) keeping track of all details relating to the Security Breach Event and the remedial actions taken; and
 - (vi) providing the School with regular updates (in such format and at such intervals as may be specified by the School on the remediation of the Security Breach Event;
 - (vii) implementing security controls that will mitigate the risks of any future Security Breach Event; and
 - (viii) complying with all directions and requests of the School in connection with the remediation of the Security Breach Event.

13.5 The Incident Report shall set out:

- (a) the background and details of the Security Breach Event, including:
 - (i) the cause of the Security Breach Event;
 - (ii) the name and version of any affected software;
 - (iii) any library dependencies; and
 - (iv) a description of the techniques that were employed or likely to be employed by the attackers in connection with the Security Breach Event; and
- (b) the actions and steps that will be taken to remedy the Security Breach

Event, and if that is not reasonably practicable, proposals on how the impact of the Security Breach Event will be contained or mitigated

(such information, the “**Security Breach Information**”).

13.6 In the case where the Security Breach Event that occurred originated from any software, infrastructure or services that a Third Party Supplier had provided as part of any Maintenance Services in this Contract (such supplier having been defined in Clause 13.9 as a Relevant Third Party Supplier), the following shall apply:

- (a) The Contractor shall ensure that the Security Breach Information in the Incident Report prepared was obtained directly from or confirmed as accurate by the Relevant Third Party Supplier.
- (b) The Contractor shall be deemed to have satisfied its obligations under sub-clause (a) and Clauses 13.4(b) and 13.5 above if the Relevant Third Party Supplier, at the request of the School or otherwise, provides the Security Breach Information directly to the School within the timeline stipulated in Clause 13.4(b).
- (c) If, for any reason, it is impracticable for the Contractor to comply with sub-clause (a) above, the Contractor shall:
 - (i) notify the School of such impracticability before the time the Incident Report is due; and
 - (ii) provide the School with the reasons for and proof of such impracticability,

and for the avoidance of doubt, the Contractor’s performance of the foregoing shall not, unless otherwise stipulated by School in writing, relieve the Contractor from its obligation under sub-clause (a).

13.7 The Contractor shall not, and shall ensure that any Sub-contractor and Third Party Supplier does not, inform any third party of any Security Breach Event without the School’s prior written consent.

13.8 Where a Security Breach Event is caused by the Contractor’s default, negligence or unlawful act, the Contractor shall reimburse the School for all reasonable costs incurred by the School in responding to and mitigating damages caused by the Security Breach Event. For the avoidance of doubt, the School shall not be entitled to double recovery of the administrative costs (including costs arising from investigative efforts) incurred by the School that is covered by the liquidated damages set out in Clause 67.1 of **Part 1, Section B (Conditions of Contract)**.

13.9 In this Contract:

“Data Breach” means any breach of security leading to:

- (i) unauthorised disclosure of or access to Data; or
- (ii) accidental or unlawful destruction or alteration to Data.

“Relevant Third Party Supplier” means a Third Party Supplier that provided (as part of any Maintenance Services in this Contract) the software, infrastructure or services from which a Security Breach Event originated.

“Security Breach Event” means an actual or potential breach of security in connection with the Solution, including without limitation the following:

- (i) any incident leading to unauthorised access to data, applications, services, networks or devices;
- (ii) any incident leading to the security or integrity of the School’s network being compromised;
- (iii) any physical security breach;
- (iv) any cyber-security breach; and
- (v) any Data Breach.

14. FORCE MAJEURE

- 14.1 Neither Party shall be liable for any failure to perform his obligations under this Maintenance Contract if the failure results from events which are beyond the reasonable control of either Party. Provided always that whenever possible the affected Party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of this agreement, such acts shall include acts of God, civil or military authority, civil disturbances, wars, strikes, fires or other catastrophes.
- 14.2 If any force majeure event shall continue for a period exceeding three (3) calendar months the School may at any time thereafter upon giving notice to the Contractor elect to terminate this Maintenance Contract.
- 14.3 In any of the events mentioned aforesaid the Contractor or the School shall for the duration of such event be relieved of any obligation under this agreement including the payment of the charges for services as is affected by the event except that the provisions of this agreement shall remain in force with regard to all other obligations under this agreement which are not affected by the event. Any monies or fees paid in advance by the School for the period and the services so affected shall be prorated and refunded to the School.

- 14.4 Where the School elects to terminate this agreement under this clause, the Contractor shall forthwith refund to the School all amounts paid to the Contractor less the price of goods and services which have been provided to the School.

15. DURATION AND TERMINATION

- 15.1 If the School exercises the Maintenance Option under **Clause 27 of Part 1, Section B (Conditions of Contract)**, the Maintenance Services shall commence on the day after Acceptance Date and shall be for a period of three (3) years. The maintenance period may, at the option of the School, be renewed for period of two (2) years.
- 15.2 The School may, at any time after the Acceptance Date, terminate the Contract by giving at least two (2) months notice in writing to the Contractor without providing any reason. For the avoidance of doubt, this is without prejudice to any termination rights of the School prior to the Acceptance Date.
- 15.3 The School may terminate the Contract with immediate effect by written notice to the Contractor if the Solution or any substantial part thereof is lost, stolen or damaged beyond economic repair.
- 15.4 The School may terminate this Contract by giving at least seven (7) days' notice in writing to the Contractor where the Contractor has breached or failed to observe any term of this Contract or generally failed to perform its obligations under the Contract in the manner contemplated by this Contract and has failed to remedy the failure or default within a period of thirty (30) days from the receipt of a notice in writing by the School requiring the Contractor to do so.
- 15.5 The Contractor may terminate this Contract by giving at least seven (7) days' notice in writing to the School where the School has failed to make any payment due for the Maintenance Services or has materially defaulted in carrying out its obligations in relation to the Maintenance Services to the extent that the Contractor is unable to properly carry out the Contractor's obligations to perform the Maintenance Services and has failed to make the payments due or remedy the material default within a period of thirty (30) days from the receipt of a notice in writing from the Contractor requiring the School to do so.
- 15.6 On the termination of this Contract, any monies or fees paid in advance by the School shall, without affecting any remedy which the School may have for any breach of this Contract by the Contractor, be pro-rated and refunded to the School.
- 15.7 Any termination of this Contract, however occasioned, shall not affect the accrued rights or liabilities of either Party nor shall any remedy which any Party

have against the other for breach of this Contract be affected.

15.8 In the event of any termination or expiration of this Contract however caused, the Contractor shall conduct a thorough inspection of the Solution together with the School or its nominated supplier to fully ascertain the condition of the Solution at the date of such termination or expiration and sign a mutually agreed certificate in respect of the findings of such inspection. If any of the following is discovered:

- (a) any obligations of the Contractor under this Maintenance Contract which remains undischarged; or
- (b) any defect, malfunction or error in the Hardware or Software was rectified in a manner which would render future maintenance effort more costly, inconvenient or cumbersome;

the Contractor shall, upon request by the School, remedy the foregoing to the School's satisfaction, failing which, the School may:

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

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17. LIST OF SCHEDULES

The Tenderer shall attach the following schedules:

17.1 SCHEDULE 1

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

17.2 SCHEDULE 2

This schedule shall cover the Routine Preventive Maintenance Schedule.

Routine Preventive Maintenance on the Hardware which the School is purchasing from the Contractor under this Contract will be carried out once every six (6) month at a convenient day and time to be mutually agreed upon between the School and the Contractor.

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21. HARDWARE MAINTENANCE CHARGE

21.1 When the Hardware Maintenance Charge is calculated on the basis of the time taken for work performed on an item of Hardware, that Hardware Maintenance Charge shall not include any time taken by the Contractor to obtain the necessary tools, parts and equipment before performing the work on the item of Hardware.

21.2 Where a minimum Hardware Maintenance Charge applies in respect of Hardware Maintenance Service undertaken to correct a fault, no further minimum Hardware Maintenance Charge shall apply to subsequent maintenance found necessary in respect of that particular fault.

21.3 The Hardware Maintenance Charge set out in the Works order shall be taken to include all labour costs.

22. DOCUMENTATION AND DIAGNOSTIC ROUTINES

22.1 Subject to **Clauses 22.2 and 22.3**, the Contractor shall, where it has or can obtain the rights to do so, provide the School with all the Documentation to be used by the Contractor in providing any maintenance service under this Maintenance Contract and a copy of such Documentation, as well as necessary facilities and equipment normally used to provide maintenance of the Hardware and the Solution.

22.2 The Contractor shall provide the School with all the Documentation referred to in **Clause 22.1** if the Contractor normally makes those items to any of its customers (including the School).

22.3 Where the Contractor does not normally make a particular item referred to in **Clause 22.2** available to any of its customers (including the School), the Contractor may supply that item to the School in special circumstances on terms and conditions to be agreed between the Parties.

22.4 The Contractor shall maintain up-to-date lists of significant spare parts, test plant and engineering diagnostic routines required for the Hardware Maintenance Service.

22.5 The Contractor shall run diagnostic programs designed to check the correct functioning of specified units according to the relevant manufacturer's specifications.

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28 LIQUIDATED DAMAGES

28.1 In the event that the Contractor fails to provide the Maintenance Services in accordance with the Service Levels, the School shall have the right (in addition to and without prejudice to all other rights or remedies available, including the School's right to terminate the Contract pursuant to **Clause 15** above) to require the Contractor to pay liquidated damages based on the computation listed in Schedule 4 of these Conditions of Software and Hardware Maintenance and Support.

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Reference: Clause 28 of this Part 1, Section C

S/No	Specific Clause	Condition	Liquidated Damages (LD)
1	Part 1 Section B, Clause 23.1	Failure to meet the Stipulated Commissioning Date	Equivalent to one tenth of a percent (0.1%) of the Development Price for each calendar day or part thereof, up to a maximum of ten (10%) percent of the Development Price.
2	Part 1 Section C, Clause 8.1e	If the Contractor is unable to meet Ninety-nine (99%) System Availability for each calendar month	One hundredth of a percent (0.01%) of the Contract Price for each day of the system unavailability up to a maximum of ten percent (10%) of the Contract Price.
3	Part 1 Section C, Clauses 3,4,5,9	Failure to resolve problems; and/or complete service request(s); and/or change request(s) within the stipulated timeframe	One hundredth of a percent (0.01%) of the contract price for each day of the delay up to a maximum of ten percent (10%) of the Contract Price.

Notwithstanding the individual clause caps stated in the table above, the total cumulative liquidated damages shall be subject to an overall cap of up to a maximum of ten percent (10%) of the Contract Price (inclusive of the list of equipment listed in Annexe B).

“Contract Price” means the aggregate price for the Solution and Services required under the Contract (including the price of all options exercised), as may be adjusted from time to time in accordance with the Contract.

“Development Price” means the Contract Price, excluding the aggregate price for the Solution and Services required under the Contract (including the price of all options exercised) after the end of the Solution Warranty Period, as may be adjusted from time to time.