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NOTE: Before submitting this Agreement to the Supplier please ensure that all NOTES and square brackets are deleted and all options have been chosen and the alternative deleted.

This is the Software Development Schedule referred to in the Order Form Number [insert Order Form Number].

1. INTERPRETATION

1.1 The definitions in this Schedule are for the interpretation of this Schedule only:

"Acceptance Certificate" means the certificate to be signed by the Customer under Paragraph 6.1;

"Acceptance Date" means the date on which the Acceptance Certificate is issued by the Customer under Paragraph 6.1;

"Acceptance Tests" means the tests of the Supplier Software after installation to be agreed in accordance with Paragraph 5.

"Completion Date" means the estimated date specified in the Implementation Plan (which may be varied in accordance with the provisions of Paragraph 4) by which the Supplier is to provide the Supplier Software Ready for Service;

"Custom Software" means any software programs developed by the Supplier specifically for the Customer under this Agreement and listed in the relevant Appendix to the Order Form;

"Customer Hardware" means the computers and other equipment to be used by the Customer in conjunction with the Supplier Software, as specified in the relevant Appendix to the Order Form;

"Documentation" means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine readable forms supplied by the Supplier as specified in the relevant Appendix to the Order Form;

"Implementation Plan" means the time schedule and sequence of events for the performance of this Agreement set out in the relevant Appendix to Order Form, which may be varied in accordance with the provisions of Paragraph 4; NOTE: the implementation plan should include milestones and should detail the service credits available for failure to meet milestones including how service credits will be paid. The other schedules such as Hosting or Maintenance can be used for guidance. If in doubt contact [GISCC][insert contact details].

"Installation Date" means the date by which the Supplier shall complete installation of a specified Software Module as specified in the Implementation Plan;

"Licensed Software" means the Supplier Software as specified in the relevant Appendix to the Order Form (except the Third Party Software and the Custom Software) and all subsequent amendments and updates to or new versions of such Supplier Software as may be provided under the Agreement;

"Modified Software" means the standard software programs proprietary to the Supplier and/or third parties listed in the relevant Appendix to the Order Form which are to be modified by the Supplier;
"Ready for Service" means installed, tested and having successfully passed the Acceptance Tests or having been otherwise deemed to be accepted within the provisions of Paragraph 6;

"Software Delivery Date" means the delivery date specified in the Implementation Plan on which the Supplier will deliver a Software Module to the Site;

"Software Module" means any one of the individual software programs in the Supplier Software;

"Specification" means the specification of the Supplier Software contained in the relevant Appendix to the Order Form and agreed between the Supplier and the Customer to meet the Customer's technical and business requirements;

"Supplier Software" means the Supplier Standard Software, the Third Party Software, the Modified Software and the Custom Software;

"Supplier Standard Software" means the software programs proprietary to the Supplier, listed in the relevant Appendix to the Order Form, which are to be provided to the Customer without modification;

"Third Party Software" means the software programs proprietary to third parties, listed in the relevant Appendix of the Order Form, which are to be provided to the Customer without modification.

1.2 This Schedule together with the Conditions, the Order Form and the other Schedules referred to therein constitutes the Agreement.

2. PRODUCTS AND SERVICES TO BE PROVIDED

2.1 The Supplier shall make the modifications to the Modified Software required to meet the Specification.

2.2 The Supplier shall develop the Custom Software in accordance with the requirements of the Specification and shall provide the Customer with two copies of the source code for the Customer Software in addition to copies of the machine-readable version.

2.3 The Supplier agrees to:

2.3.1 deliver and install the Supplier Software at the Site;

2.3.2 carry out, in conjunction with the Customer, the Acceptance Tests;

2.3.3 provide the Supplier Software Ready for Service by the Completion Date;

2.3.4 provide the Documentation to the Customer;

2.3.5 provide the Training if any to the Customer in accordance with the Training Schedule.

on the terms and conditions set out in this Agreement.
3. SOFTWARE DELIVERY, INSTALLATION AND DELAYS

3.1 The Supplier shall deliver each Software Module to the Site by the applicable Software Delivery Date.

3.2 The Supplier shall supply to the Customer, within a reasonable time before any Software Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Site for the installation of the relevant Software Module.

3.3 The [Supplier][Customer] shall, at its own expense, prepare the Site in accordance with the information provided by the Supplier in advance of each Software Delivery Date. The [Supplier][Customer] may request reasonable assistance from the [Customer][Supplier] to carry out such preparation.

3.4 The Supplier shall deliver each Software Module to the Site on or before the Delivery Date for that item.

3.5 The Supplier shall complete installation of each Software Module at the Site by the Installation Date for that Software Module.

3.6 The Customer shall be responsible for ensuring that each item of Customer Hardware and Customer Software is installed and is in working order and available to the Supplier no later than the relevant date specified in the Implementation Plan.

3.7 If there is a delay of the date when the Supplier Software is scheduled to be Ready for Service and such delay is caused by the acts or omissions of the Supplier or any third party manufacturer, the Supplier shall be liable for any reasonable costs that the Customer can demonstrate it incurred as a result of such delay.

4. IMPLEMENTATION PLAN AND EXTENSION OF TIME

4.1 Both parties shall perform their obligations under this Schedule in accordance with the Implementation Plan.

4.2 The Supplier shall complete the Services in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to the provisions of Paragraph 4.3.

4.3 The Supplier shall be given an extension of time for completion of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:

4.3.1 a variation to the Supplier Software is made at the Customer's request pursuant to the change control procedures set out in Clause 5; or

4.3.2 an Event of Force Majeure occurs as described in Clause 9; or

4.3.3 delay is caused in whole or in part by an action or omission of the Customer or Customer Personnel.

4.4 If the Supplier is entitled to an extension of time under Paragraph 4.3, it shall give written notice to the Customer not later than [7] days after the beginning of the event. Such notice shall specify the event relied on and, in the case of an Event of Force Majeure under Clause 9, shall estimate the probable extent of the delay.

4.5 The Customer Representative and the Supplier Representative shall use best endeavours to agree in writing, signed by both parties, what extension of time is
reasonably in the circumstances. The Implementation Plan shall be deemed amended accordingly.

5. ACCEPTANCE TESTS

5.1 No later than [10] days before the Completion Date, the Customer shall deliver to the Supplier proposed user acceptance criteria and test data for the Acceptance Tests for the Supplier Software. These criteria and data shall be such as is reasonably required to show that the Supplier Software complies with the Specification. The Supplier shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request. The parties shall use best endeavours to agree the Acceptance Tests for the Supplier Software within [10] days from the date of delivery to the Supplier of the proposed criteria and data.

5.2 The Supplier shall carry out the agreed Acceptance Tests for each Software Module within [10] days of its Installation Date. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Normal Working Hours. The Supplier shall carry out the agreed Acceptance Tests for each Software Module unless the Customer notifies the Supplier, not later than [5] days after the Installation Date, that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least [24] hours’ notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.

5.3 If any Software Module fails to pass the Acceptance Tests, the Customer shall, within [ ] days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.

5.4 If any Software Module fails [in some material respect] to pass any repeated Acceptance Tests within [4 weeks] from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:

NOTE: Supplier’s may require the inclusion of "material respects" otherwise any failure, however small would be sufficient to trigger this paragraph.

5.4.1 to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions. If the Software Module fails such further tests then the Customer shall be entitled to request a repeat test under the provisions of this Paragraph 5 or to proceed under Paragraph 5.4.2 or Paragraph 5.4.3; or

5.4.2 to accept the Software Module subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the Charge as, after taking into account all the relevant circumstances, is reasonable; or

5.4.3 if the Supplier is unable to correct material defects within a period of [3] months from the commencement of Acceptance Tests under Paragraph 5.2, to reject the Supplier Software as not being in conformity with the Agreement, in which event the Customer may terminate this Schedule and/or Agreement.

5.5 Upon completion of all acceptance tests on the individual Software Modules as provided in Paragraph 5.2, Paragraph 5.3 and Paragraph 5.4 above, the Supplier shall carry out the agreed Acceptance Tests for the installed Supplier Software as a
whole to ensure that it meets the Specification. The relevant provisions of Paragraph 5.2, Paragraph 5.3 and Paragraph 5.4 above shall apply to these Acceptance Tests in the same way as they apply to acceptance tests for the individual Software Modules.

6. ACCEPTANCE

6.1 Acceptance of the Supplier Software shall occur on whichever is the earliest of:

6.1.1 the signing by the Customer of an Acceptance Certificate for the Supplier Software following successful completion of the testing under Paragraph 5.5; or

6.1.2 the use of the Supplier Software by the Customer in the normal course of its business.

7. DOCUMENTATION

7.1 The Supplier shall provide to the Customer from time to time copies of the Documentation specified in the relevant Appendix to the Order Form containing sufficient up-to-date information for the proper use [and maintenance] of the Supplier Software.

NOTE: delete "and maintenance" if maintenance is being provided.

7.2 The Customer may make such further copies of the Documentation as are reasonably necessary for the use [and maintenance] of the Supplier Software [and for training the Customer’s Personnel in use of the Supplier Software as set out in the Training Schedule].

7.3 The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation with the Supplier.

8. WARRANTIES

8.1 Conformance with Specification

8.1.1 The Supplier warrants that the Supplier Software will conform in all material respects to the Specification during the Warranty Period. If, within the Warranty Period, the Customer notifies the Supplier of any defect or fault in the Supplier Software in consequence of which it fails to conform in all material respects with the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it for a purpose other than the purpose for which it was designed, the Supplier will, at the Supplier’s option, do one of the following:

(a) correct the defect or fault; or

(b) replace the Supplier Software; or

(c) refund the Charges.

8.2 Modifications

The warranties in Paragraph 8.1 will apply to any Modification which is acquired by the Customer during the course of this Agreement as though the references to the

Correct as at 6th April 2009. Printed copies should not be relied upon.
Commencement Date were references to the date on which such Modification was acquired.

9. LICENCE AND TERM

9.1 Grant of Licence

In consideration of the Charges, which will be payable by the Customer to the Supplier in accordance with Clause 4, the Supplier hereby grants to the Customer a non-exclusive, [perpetual licence][licence for the Term] to use, maintain and develop the Supplier Standard Software and the Third Party Software and an exclusive, perpetual licence to use, maintain and develop the Modified Software and the Custom Software.

NOTE: An exclusive licence means only the Customer is given the right to use the Supplier Software, it is unlikely that the Supplier will give an exclusive licence unless it is for the Modified and Custom Software developed under the Software Development Schedule. Delete the options as appropriate.

9.2 Scope of Use

9.2.1 For the purposes of Paragraph 9.1, “use” of the Supplier Software will be restricted to use of the Supplier Software in object code form for the normal business purposes of the Customer but will include any act which is reasonably incidental to such use, including (without limitation) the maintenance of a reasonable number of back-up or test copies of the Supplier Software.

9.2.2 Where Customer Personnel are permitted to use, develop, modify and maintain the Supplier Software pursuant to Paragraph 9.1 the permission will only extend to such use, development, modification or maintenance as is necessary for the purpose of using, maintaining and developing the Supplier Software.

9.2.3 Save as stated in Paragraph 9.1, the Customer will have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Supplier Standard, Third Party Software and or Background Rights in whole or in part except;

(a) to the extent that must be permitted by Law; and/or

(b) to the extent that such action is legitimately required for the purposes of integrating the operation of the Supplier Software with the operation of other software or systems used by the Customer, in circumstances where the Supplier is not prepared to carry out such action at a reasonable commercial fee.

9.3 The Supplier shall provide the Third Party Software under the standard licence terms provided by such third parties, copies of which have been provided to the Customer and are attached at Appendix 1, and the Customer agrees to be bound by such licence terms.

10. IPR OWNERSHIP

10.1 The Intellectual Property Rights of whatever nature in the Supplier Standard Software are, and shall remain, the property of the Supplier. The Supplier reserves the right to grant a licence to use the Supplier Standard Software to any other parties.
10.2 The Supplier hereby assigns to the Customer the Intellectual Property Rights of whatever nature in the Custom Software.

10.3 The Intellectual Property Rights of whatever nature in the Modified Software [are, and shall remain, the property of the Supplier, but the Supplier agrees that it shall not grant a licence to use the Modified Software to any other party without the prior written permission of the Customer.] [will be assigned to the Customer.]

10.4 The Supplier will, at its own cost and expense, use best endeavours to do, or procure to be done, all such further acts and things and execute or procure the execution of all such other documents as the Customer may from time to time require for the purpose of giving the Customer the full benefit of the provisions of this Paragraph 10 and the rights and benefits to be transferred to the Customer under this Paragraph 10.

10.5 The Licensed Software and the Documentation are proprietary to the Supplier (or the appropriate third party rights owner(s)) and the Customer acquires no rights in or to the Licensed Software or the Documentation other than those expressly granted by this Agreement.

11. ESCROW

The Supplier and the Customer mutually undertake to execute the escrow agreement at Appendix 2, promptly following execution of this Agreement. The Supplier additionally undertakes to procure that the escrow agent, being a party to the escrow agreement, executes such escrow agreement.

APPENDIX 1

third party software licences

APPENDIX 2

escrow agreement

NOTE: attach escrow agreement