

HARDWARE MAINTENANCE AGREEMENT (HMA)

(Fixed cost covering labour, parts, transport, drill, backup equipment and other related cost)

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SCHEDULES

- I. List of Hardware Products and Software
- II. Site Location, working days and working hours
- III. Charges and Terms of Payments

HARDWARE MAINTENANCE AGREEMENT

BETWEEN

.....; having its registered office at
....., (hereinafter referred to as "Contractor"), on one part,

AND

..... (hereinafter referred to as
"Client"), on the other part.

WHEREAS the Client wishes to contract with the Contractor the ongoing maintenance and support of the SERVER SYSTEM and/or peripherals described in **Schedule I** to this Agreement.

WHEREAS the Contractor warrants that it has the ability and capability to provide such services.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

The following words and expressions used in this Agreement shall have the following meaning-

"SERVER SYSTEM" shall mean the equipment and system software listed in **Schedule I** to this Agreement;

"Confidential information" means all information (in whatever media) designated as such by either party in writing, or which relates to the business, affairs, activities, financial position, trade secrets, know how, source code, personnel or supplies of that party;

"location" means those premises defined in **Schedule II** to this Agreement;

"workdays" means working days specified in **Schedule II** to the agreement;

"workhours" means working hours for the purpose of this Agreement as specified in **Schedule II** to this agreement.

2. TERMS OF AGREEMENT

- a. This Agreement shall be for a term of not more than one year and shall not be subject to tacit renewal.
- b. The Contractor shall notify the Client two months before expiry date of the maintenance Agreement for the renewal of the maintenance services for the forth-coming year.
- c. The Client shall notify the Contractor one month before the Hardware Maintenance Agreement is scheduled to expire of its intention to renew the maintenance services for the forth-coming year.
- d. The agreement shall be renewed on the same terms and conditions unless otherwise agreed, in writing, by the parties.

3. MAINTENANCE SERVICES

- a. (i) Equipment maintenance services are to be rendered at the locations designated by the Client (**Schedule II**), but the Contractor may remove from Client's premises any complete item of equipment for the purposes of providing the service.

(ii) Where an item of equipment is removed for the purposes stated in paragraph (i) above, the Contractor shall be responsible for any loss or damage caused to the equipment during its removal, transport and during the time the equipment is in his custody.
- b. (i) Consumables and attachments are excluded from this Agreement.

(ii) For the purpose of this Agreement the list of consumables and attachments are or includes paper, tapes, diskettes, CDs, printing ribbons, cartridges.
- c. The Client shall pay such additional rate as specified in **Schedule III** to the Contractor to repair the equipment where a problem is caused by the misuse or abuse of equipment, whilst it was in the custody of and use by the Client.
- d. (i) The Contractor shall effect a drill exercise once in every period of 12 months, but not later than 8 months after the start of the agreement.

(ii) The Contractor may be required to simulate a catastrophic problem without any notice and set-up backup equipment at the Client's Site Location (as per **Schedule I or II**).
- e. The Contractor shall install at no additional cost any free upgrade supplied by the hardware manufacturer/software vendor (e.g. third party Operating System) including but not limited to hardware, operating system, utilities, and patches.

- f. The Contractor shall maintain a record of all submitted problems and shall keep track of its actions taken towards problem resolution.

4. SUPPORT MAINTENANCE SERVICES

The normal support will consist of the following activities -

A. Preventive maintenance

- (i) Preventive maintenance shall include testing, cleaning, lubricating, inspecting and adjusting of the SERVER SYSTEM to ensure that the SERVER SYSTEM is in good working condition, and for the purpose of rendering these services the Contractor may shut down the SERVER SYSTEM.
- (ii) The Contractor may, for the purpose of preventive maintenance, shut down the SERVER SYSTEM upon 5 days prior notice being given to the Client.**
- (iii) The Contractor shall supply a maintenance history for each item of the SERVER SYSTEM.
- (iv) The Contractor shall carry out at least 2 (two) preventive maintenance exercises, at regular intervals (every 6 months), during the course of this Agreement.
- (v) The Contractor shall give advance notice of its visits to the Client.

B. Remedial maintenance

- a. Upon notification from the Client that the equipment has failed or is malfunctioning, the Contractor shall make such repairs and adjustments to and replace such parts of the equipment as may be necessary to restore the equipment to its proper operating condition to client's satisfaction.
- b. (i) Where in the course of a cyclone, the SERVER system has been switched off, the Contractor shall, within a period of 24 hours after the cyclone warning has been lifted, or within 2 hours of having been informed by the Client that it wishes to switch on the SERVER system, the Contractor shall carry out an inspection and switch on the SERVER system;
- (ii) Where the Contractor is of the view that it would not be safe to switch on the SERVER system, he shall so advise the Client and instruct the Client

of the steps to be taken so as to have the SERVER system operational within the shortest possible delay;

- (iii) In any case the Contractor shall be present when the SERVER system is to be switched on;
- (iv) The contract of maintenance shall be deemed to cover any service provided under this paragraph and any action taken such as, but not limited to the replacement of defective parts, reinstallation of software, reconfiguration of the system and in case of defects not resulting directly or indirectly from the cyclone.

C. PROPERTY OF DEFECTIVE PARTS

All defective parts permanently removed shall become the property of the Contractor as of the date when the replacement part is fitted with the SERVER SYSTEM except defective hard disks or medium on which information is stored. In the case of replacement of hard disk or medium on which data is stored, then the defective part should remain in the custody of the CUSTOMER (even during warranty).

D. Problems reporting and resolution

Reporting of problems may be via telephone, fax, e-mail, postal service or any other agreed means.

The Contractor shall establish the severity of a reported Hardware and/or Operating System (including other related software e.g. network management system) problem jointly with the Client according to the following definitions-

- i. **catastrophic problem** - system is down, user is unable to function or complete work. This includes a non-isolated, consistently reproducible problem resulting in system crash.
- ii. **major problem** - this covers problem which must be corrected but do not prevent progress from being made, and/or problems which do not require immediate attention and includes-
 - I. isolated, consistently reproducible problem resulting in a system crash;
 - II. failure of a significant function of the equipment.
- iii. **minor problem** - a problem which does not have a major impact on operation or development, or for which an adequate workaround exists, and includes requests for

add-ons.

- iv. **non-reproducible error** - a reported error which Contractor cannot diagnose or reproduce.

The Contractor shall report back to the Client within two hours of him being notified by the Client of a problem. The Contractor shall inform the Client in his report of the severity level assigned to the problem.

Based on the severity level of the problem, the Contractor shall provide the Client with either -

- a solution,
- a workaround,
- a report stating that further research is required, or
- a report stating that the problem cannot be reproduced, and will not be fixed.

The Contractor may re-classify the problem after consultation with the Client as more information becomes available.

After the assessment of the severity level of the problem, the SERVER SYSTEM (or replacement equipment whose configuration should be at least as per **Schedule I**) should be up and running within the time frame given below:

Severity Level	Hours after the initial call back
Catastrophic	Within 6 working hours
Major	Within 12 working hours
Minor	Within 24 working hours
Non-reproducible	<u>Within 72 working hours</u> The contractor will have to provide the client with a report stating that the problem cannot be reproduced and will not be fixed.

The Contractor shall keep the Client informed of the problem report resolution progress by phone, fax, or e-mail.

In case of a catastrophic problem or a major problem and where a replacement equipment (whose configuration should be at least as per **Schedule I**) has been provided, the Contractor shall restore the system software and associated software. The Contractor shall, further, assist other parties in making the whole system operational (e.g. helping in restoration of data, etc...). The replacement equipment will remain in custody of the Client even

after the termination of this contract until the SERVER system has been repaired and reinstalled on the Client's premises. The Contractor will continue to intervene on the replacement equipment as and when required at no additional cost as if it was intervening on the original equipment.

5. RELOCATION OF EQUIPMENT

- a. The Client shall have the right to relocate or install the SERVER SYSTEM in accordance with clause 5 hereof, upon thirty (30) days written notice given to the Contractor of such relocation or installation. The SERVER SYSTEM so relocated or installed shall continue to be covered by this Agreement, and the new place of installation shall be deemed to be added to the list of places of installation contained in **Schedule II**.
- b. ***Subject to paragraph (c), where the SERVER SYSTEM is being relocated or installed in accordance with paragraph (a), the Contractor shall be responsible for the dismantling and packing of the equipment and shall inspect and install or reinstall the equipment at the new location, at no additional cost to the Client.***
- c. ***The Client shall, where the transportation is effected by the Contractor, pay the costs of transportation, on such terms and conditions as may be agreed by the parties.***
- d. ***Where the transportation of any equipment is effected by the Contractor or its agent, the Contractor shall take an insurance policy in favour of the Client to cover any loss and/or damages to the SERVER SYSTEM.***
- e. ***Where the transportation of the equipment is effected by the Client, the Contractor shall advise the Client about the type of insurance needed. Upon mutual written agreement, the Contractor may take the insurance on behalf of the Client and the Contractor shall send the invoice of the insurance to the Client.***
- f. Any relocation or installation shall be within the Republic of Mauritius.
- g. Any relocation or installation shall be subject to the Contractor's approval concerning the environment, ***including power supply, temperature and humidity.***

6. CUSTOMER OBLIGATIONS

The Client shall give full access to the location and equipment to enable the Contractor to provide the maintenance services and the Client shall make available such information, facilities and services as are reasonable for the

performance of the obligations under this Agreement. The Contractor shall comply with the Client's security and confidentiality rules.

7. MAINTENANCE FEE AND PAYMENT TERMS

- a. The maintenance fee is as specified in **Schedule III** of this Agreement and is fixed.
- b. (i) Any request for alteration of the fee from the Contractor shall be in writing and supported by documentary evidence justifying the alteration (e.g. additional tax to be paid by Contractor due to increase in Value Added Tax).

(ii) Alteration to the maintenance price, subject to approval by the Client, shall be incorporated as a term of this Agreement by appending a new version of **Schedule I and Schedule III** to this Agreement and the new term come into effect on the effective date specified therein.
- c. Any request for the maintenance of additional equipment which are not covered under the normal maintenance services as listed per **Schedule I**, shall first be submitted in writing by the Client to the Contractor. Such additional equipment shall be deemed to have been added to the list of SERVER SYSTEM and the additional equipment shall be subject to the terms and conditions of this Agreement at an additional fee to be mutually agreed between the parties in writing.
- d. The Contractor may, subject to the agreement of the Client and where applicable, prorate the Hardware Maintenance Agreement fees so that maintenance services for all equipment are renewable on the same date, even if all the equipment were not delivered or purchased on the same date.
- e. In case of relocation of the SERVER SYSTEM other than under clause 5(a), the charges shall not exceed half the rate of charges for SERVICES OUTSIDE THIS AGREEMENT as specified in **Schedule III**.

8. LIMITATION OF LIABILITY

- a. Subject to clause 11 and paragraphs c and d below, the personal liability of the Contractor for any claim made by the Client and which relates to this Agreement, including any cause of action arising in contract or tort, shall not exceed the value of the SERVER SYSTEM **as specified in the Schedule**.
- b. The Contractor shall take a **comprehensive insurance coverage** in favour of the Client on SERVER SYSTEM.
- c. No clause of this Agreement shall be construed on purporting to exclude or limit liability –

- (i) for death or personal injury;
 - (ii) for any damage, arising from the imprudence or negligence of the Contractor.
- d. Neither Party shall be liable for any special, incidental or consequential damages of any nature or kind whatsoever, except where such damages is caused by a breach of Clause 11.

9. TAXES AND DUTIES

- a. The charges specified in **Schedule III** to this Agreement are inclusive of all duties and taxes applicable to the Client at time of signing the contract.
- b. Unless otherwise specified, this clause shall be deemed to relate to indirect taxes only.
- c. Each Party shall otherwise be responsible for taxes based on its own net income, employment taxes of its own employees and for taxes on any property it owns or leases.

10. CUSTOMER'S AND CONTRACTOR'S LIAISON OFFICERS

- a. (i) Both the Client and the Contractor shall appoint a primary and a backup contact liaison officer.
- b. (ii) A party may change a contact liaison officer after due notification has been given to the other party.
- c. The Client's primary contact liaison officer shall be responsible for -
 - i. submitting problem reports to the Contractor;
 - ii. communicating with the Contractor;
 - iii. keeping and maintaining a record of all problem reports submitted to the Contractor, keeping track of any action required to be taken by the Client for a given report and recording any action taken by Contractor.
- d. The Contractor's primary contact liaison officer shall be responsible for -
 - i. taking action on all problem reports submitted by the Client;
 - ii. communicating with the Client;

- iii. keeping and maintaining a record of all problem reports submitted by the Client and keeping track of any action taken towards solving the problem.
- e. The backup contact liaison officer shall assume the responsibilities of the primary contact liaison officer should the latter be unavailable to fulfill his duties.

11. CONFIDENTIALITY

- 11.1 ***Each party acknowledges that any confidential information obtained from or relating to the other party, its servants or agents, is the property of the disclosing party.***
- 11.2 The Contractor ***or any person employed or engaged by it in connection with this Agreement in the course of such employment or engagement***, shall treat all information that he may come across in the course of this Agreement in strict confidentiality, failing which they may be liable to damages, or other action as may be available.
- 11.3 The Contractor ***or any person employed or engaged by it in connection with this Agreement in the course of such employment or engagement*** shall not reveal to any ***third party*** any information obtained during the execution of the contract, ***without the prior written consent of the Client.***
- 11.4 The Contractor shall be bound by this clause, even after the expiry or termination in any way whatsoever of this agreement.
- 11.5 Clause 8 shall not apply to any breach of the Contractor's duties and obligations under this clause.

12. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the Laws of the Republic of Mauritius.

13. ARBITRATION

- a. A party shall notify the other party, in writing, of any dispute or disagreement, under this Agreement and specifying the nature of the dispute or disagreement, within a period of thirty (30) days of the occurrence of the

dispute or disagreement.

- b. Where a dispute or disagreement has been notified, parties shall attempt to resolve the dispute or disagreement amicably.
- c. Where the dispute or disagreement has not been resolved within a period of 30 days of the notification, any of the party may refer that matter for arbitration by an arbitrator to be appointed by the Judge in Chambers (Supreme Court of Mauritius) under the laws of the republic of Mauritius.
- d. The Arbitrator shall determine the issue in dispute within a period of 3 months of the dispute being referred to him. This period may be extended to 6 months by agreement of the parties.
- e. The party against whom the award has been made shall also reimburse the other party its share in the cost of the arbitration, including the cost of legal representation.

14. FORCE MAJEURE

- a. Neither the Contractor nor the Client shall be liable for failure to meet their contractual obligations due to Force Majeure.
- b. In this agreement, Force Majeure includes strikes, blockage, war, mobilisation, revolution or riots, natural disaster, acts of God, in so far as such an event prevents or delays the contractual party from fulfilling its obligations, without its being able to prevent or remove the impediment at reasonable cost.
- c. The party claiming Force majeure shall immediately take reasonable steps to limit consequence of such an event.
- d. The party who wishes to plead Force Majeure shall inform in writing the other party without delay of the event, of the time it began and its probable duration and steps taken to limit the consequences of such event. The moment of cessation of the event shall also be reported in writing.
- e. The party who has pleaded an event of Force Majeure is under obligation, when requested, to prove its effect on the fulfilling of this Agreement.

15. DAMAGES

Where after notification, the Contractor has failed to comply to any obligation under this agreement within a period of one month of the notification the Client may claim damages not exceeding 10% of the monthly payment, for every

month of non-compliance, until the Contractor has complied with its obligations.

16. TERMINATION

- a. This agreement may be terminated by either party -
 - (i) upon one (1) month notice, in the event of a material breach by the other party of any of the terms of this Agreement unless the breach is fully cured within the said notice period, or
 - (ii) upon the termination of the parties' business.
- b. The Client may terminate the agreement by giving fifteen (15) days notice where the equipment is no longer operational under extreme conditions (e.g. stolen or damaged beyond economic repair, etc...).
- c. The Client reserves the right to terminate this Agreement at anytime upon providing the Contractor with ninety (90) days' notice.
- d. The notice of termination of the agreement shall be in writing and shall be by registered letter with acknowledgment of receipt.
- e. In the event of termination of the contract under paragraphs a(ii) (b) and (c), the parties shall mutually agree to settle their respective accounts, but the sum payable to the Contractor shall not exceed a sum equivalent to a monthly installment payable to the Contractor for services provided under this contract.

Notwithstanding the foregoing, all provisions, hereof, relating to confidentiality shall survive the termination of this Agreement.

17. ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns, but it shall not be assigned in whole or in part by either party without the prior written consent of the other, except where either party's interests is assigned through merger, consolidation, re-organisation, sale or transfer of substantially all the assets of the party.

18. NON-WAIVER

No term or provision of this Agreement shall be deemed waived and no breach

thereof shall be deemed excused, unless such waiver or consent is given in writing and signed by the party alleged to have waived or consented. No consent by any party to, or waiver of, a breach by the other, whether express or implied, shall constitute consent to, waiver of, or excuse for, any different or subsequent breach.

19. NOTICE

19.1 Subject to clause 15 (c), any notice, request, demand, approval, consent or other communication provided or permitted hereunder shall be in writing and given by personal delivery or sent by registered mail fax addressed with receipt of confirmation that such transmission has been received to the party for which it is intended.

19.2 Such any notice, request, demand, approval, consent or other communication shall be deemed given when personally delivered to the person referred to below or on the third business day after being sent by registered mail to the address below or in the case of fax on the date of confirmation:

The Client: [Contact Name]

[Address]

[Phone & Fax Number]

The Contractor: [Contact Name]

[Address]

[Phone & Fax Number]

20. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor and shall not be deemed the agent or employee of the Client for any purpose whatsoever and the Contractor shall not hold himself out as an employee or agent of the Client, and shall have no power or authority to bind or obligate the Client in any manner whatsoever.

21. AMENDMENTS TO AGREEMENT

No amendment to this Agreement shall be effective unless it is in writing and duly signed by authorised representatives of both parties.

22. ENFORCEABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be deemed severed and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

23. ACKNOWLEDGEMENT

Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the Agreement among the parties, which supersedes and merges all prior proposals, understandings and all other agreements oral and written among the parties relating to the subject matter of this Agreement.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET
THEIR HANDS AS OF THE DATE FIRST ABOVE WRITTEN**

DRAWN UP IN TWO (2) ORIGINALS

**FOR AND ON BEHALF OF
CLIENT**

**FOR AND ON BEHALF OF
CONTRACTOR**

SIGNATURE_____
(Authorised Signatory)

SIGNATURE_____
(Authorised Signatory)

NAME :

NAME :

TITLE :

TITLE :

PLACE :

PLACE :

DATE :

DATE :

SCHEDULE I

List of Hardware Products & Software

Equipment List (including System Software, UPS, cabling & accessories) at

.....

EQUIP. CODE	EQUIPMENT (make, model, description, etc...)	QTY	TOTAL COST	END OF WARRANTY	MAINT / YEAR	MONTHS MAINT	MAINT COST

BACKUP EQUIPMENT :

Number of users to be supported:

Configuration of backup equipment should be sufficient to support the above number of users and disk requirements:

Item	Proposed
CPU	
Number of CPU	
RAM	
No. of controllers	
No. of Hard Disks	
DAT Drive	
CD-ROM Drive	
Operating System	

SCHEDULE II

Site Location, working days and working hours

1. Client Location

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

2a. Client Primary Contact, Fax, Tel. No. and E-mail

.....
.....

2b. Client Backup Contact, Fax, Tel. No. and E-mail

.....
.....

3. Contractor Location

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

4a. Contractor Primary contact, Fax, Tel. No. and E-mail

During Office Hours	After Office Hours
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.....
.....

4b. Contractor Backup contact, Fax, Tel. No. and E-mail

During Office Hours	After Office Hours
---------------------	--------------------

.....
.....

5. Workdays

Monday to Friday, except public holidays

6. Workhours

8:45 hours to 16.00 hours

SCHEDULE III

(Charges and Terms of Payment)

(Option 1 – During office hours)

Annual Maintenance & Technical Support Services covering:

- a. Remote Support Services;
- b. On Site Services during Normal Office Hours.
- c. On Site Services after Normal Office Hours as per conditions

below:

- Contractor will intervene as per conditions for support during office hours.
- Each intervention *after normal office hours* will be charged separately as follows:

Day	Time period	Daily rate (8 consecutive hours)	Hourly rate
Monday to Friday (4:00pm to 8:45am)			
Saturday			
Sunday			
Public Holiday			

(payment will be effected on whichever is the minimum of Daily and Hourly rate x Intervention time)

Annual Fees (including charges for item c above) payable in monthly installments in advance

Rupees Only (Rs)

It covers the **period to**

SERVICES OUTSIDE THIS AGREEMENT (example installation of a new Operating System) **will be available** under the following conditions.

1. Any service outside this Agreement will be requested to the Contractor with at least one week's notice.

2. Support Service Daily and Hourly Rate
 (payment will be effected on whichever is the minimum of Daily and Hourly rate x Intervention time)

For such service *during standard support hours* (i.e. workdays and workhours), the daily and hourly rate or part thereof are Rs....., and Rs..... respectively.

3. Extended Support Service Daily and Hourly Rate

For such service *after standard support hours*, the daily and hourly rate or part thereof are as follows:

Day	Time	Daily rate (8 consecutive hours)	Hourly rate
Monday to Friday (4:00pm to 8:45am)			
Saturday			
Sunday			
Public Holiday			

(payment will be effected on whichever is the minimum of Daily and Hourly rate x Intervention time)

Note : Charges for services that are covered within THIS AGREEMENT but being performed outside the workdays and/or workhours, will be paid at half the rate of charges for SERVICES OUTSIDE THIS AGREEMENT. Example, major installation of upgrade that might affect the normal operation of Contractor's business.

(Option 2 - 24 hours 7 days a week)

Annual Maintenance & Technical Support Services covering:

- a. Remote Support Services;
- b. On Site Services during twenty-four hours seven days a week;

Annual Fees payable in monthly installments in advance

Rupees Only (Rs)

It covers the **period to**

SERVICES OUTSIDE THIS AGREEMENT (example installation of a new Operating System) **will be available** under the following conditions.

- 1. Any service outside this Agreement will be requested to the Contractor with at least one week's notice.
- 2. Support Service Daily and Hourly Rate
(payment will be effected on whichever is the minimum of Daily and Hourly rate x Intervention time)

For such service *during standard support hours* (i.e. workdays and workhours), the daily and hourly rate or part thereof are Rs..... and Rs..... respectively.

- 3. Extended Support Service Daily and Hourly Rate

For such service *after standard support hours*, the hourly rate or part thereof are as follows:

Day	Time	Daily rate (8 consecutive hours)	Hourly rate
Monday to Friday			

(4:00pm to 8:45am)			
Saturday			
Sunday			
Public Holiday			

(payment will be effected on whichever is the minimum of Daily and Hourly rate
x Intervention time)