

# HOSTING AGREEMENT FOR THE DISASTER RECOVERY SITE OF HRDC

BETWEEN

SERVICE PROVIDER, SYSTEM VENDOR AND  
CLIENT



Date: 2022

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## ACRONYMS

<b>Name</b>	<b>Description</b>
<b>VLAN</b>	<b>Virtual Local Area Network</b>
<b>Systems</b>	<b>Hardware, Software &amp; WebSites</b>
<b>System Vendor</b>	<b>Entity having implemented the Systems at the hosted site</b>

## SERVICE LEVEL AGREEMENT

THIS AGREEMENT effective as of [DATE], [YEAR]

BETWEEN:

*Service Provider* ("Service Provider") located at *Address*

THE FIRST PARTY,

- and -

*System Vendor* ("System Vendor") located at *Address*

THE SECOND PARTY,

- and -

*Client Name*. ("Client") located at *Address*

THE THIRD PARTY,

WHEREAS Service Provider offers hosting and other data center related services;

WHEREAS System Vendor has implemented the Systems of the Client at the hosted site;

and

WHEREAS Client wishes to retain the services of Service Provider through the System Vendor to host its systems;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, mutual covenants and agreements herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

## 1. Services and Systems

- (a). The Service Provider shall provide hosting and related services to Client in accordance with the terms of this Agreement. The hosting services to be provided by the Service Provider are described as set out in Schedule "A1" attached hereto and incorporated into this Agreement (hereinafter referred to as the "Services").
- (b). The Services shall cover hosting of the Client's Systems. These Systems will include Hardware, Software, Websites and Databases.

## 2. Term of this Agreement

The term of this Agreement shall commence on the date of this Agreement and shall continue for successive one year periods, which shall automatically renew under the same terms and condition set forth herein without further documentation being required, subject to the Service Provider's rights of revision as described below, and unless and until either party terminates the Agreement in accordance with section 14 herein (the "Term").

### 2A. MAINTENANCE FEE AND PAYMENT TERMS

- a. The maintenance fee is as specified in **Schedule E** of this Agreement and is normally fixed.
- b. (i) Any request for alteration of the fee from the Service Provider shall be in writing and supported by documentary evidence justifying the alteration (e.g. additional tax to be paid by Service Provider 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 A and Schedule E** 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 A**, shall first be submitted in writing by the Client to the Service Provider. Such additional equipment shall be deemed to have been added to the list of COMPUTER 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 Service Provider 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 COMPUTER SYSTEM, the charges shall not exceed half the rate of charges for SERVICES OUTSIDE THIS AGREEMENT as specified in **Schedule E**.
- f. The Client shall pay such additional rate as specified in **Schedule E** to the Service Provider 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.

### **3. Support Services**

Service Provider shall provide technical and support services ("Support Services") to Client as per schedule A2. However the Service Provider's Support Services shall be limited to providing matters pertaining to Client's servers, Internet connection, Service provider's corporate policies and this Agreement. The Support Services to be provided by the Service Provider are set out in Schedule "A2".

### **4. Security**

Service Provider shall provide appropriate security Infrastructure as per schedule B.

## **5. Back-Up Data and Disaster Recovery**

- (a) Service Provider with the assistance of the appointed System Vendor shall provide backup services for the Client's systems and retain those back-ups offsite location to provide enhanced disaster recovery capability. Service Provider shall provide the transfer of backup tapes service to the Client of the data and tapes at the designated off-site location as per schedule A1 and in case of restoration the tapes should be transferred from the off-site location to the Data Centre (Hosting site).
- (b) In the event that Client's data is lost from Client's system, Service Provider with the assistance of the appointed System Vendor shall restore the back- up data to Client's systems.

## **6. Reporting**

Service Provider shall provide Client with the reports as per schedule C

## **7. Client Access**

- (a) Service Provider shall provide Client the ability to access data on Client's system and make changes with a password set by the Client.
- (b) Client's connection will be secured as per Schedule B.
- (c) Service Provider will grant physical access to the infrastructure at the hosting site to the Client's designated personnel. Access should be granted as per Schedule A2.

## **8. Confidentiality**

- (a) The parties acknowledge that by reason of their relationship to

each other hereunder, each will have access to certain information and materials concerning the other's technology and data that is confidential and of substantial value to that party, which value would be impaired if such information were disclosed to third parties ("Confidential Information").

- (b) Each party agrees that it will not use in any way, except as provided herein, nor disclose to any third party, any such Confidential Information revealed to it by the other party. Each party will take every reasonable precaution to protect the confidentiality of such Confidential Information. Each party shall not divulge or use in any manner any confidential information unless written consent from the party concerned has been obtained.
- (c) Without prejudice to the generality of paragraphs 10 (a) and 10 (b), all confidential information which the Client may have imparted and may from time to time impart to the Service Provider is proprietary and confidential and the Service Provider –
  - a. agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement disclose the same whether directly or indirectly to any third party without the Client's and/or Client's prior written consent; and
  - b. shall, forthwith after the expiry or termination of this Agreement, return all such confidential information (including any copy which may have been made) to the Client and/or User together with a list of same.
- (d) The Service Provider undertakes that every of its employee and/or its agent required by it to perform its duties under this Agreement shall sign a non-disclosure agreement in respect of every

Confidential Information which the employee and/or agent may come across during the discharge of their duties under this Agreement; failing which the Service Provider shall be liable to damages.

- (e) The foregoing provisions shall not prevent the disclosure or use by either party of any Confidential Information to the extent expressly permitted by law.

## **9. Client Software**

The Client acknowledges that responsibility for all Software included in the Systems is the sole and exclusive responsibility of the System Vendor and Client and that Service Provider will not be held responsible in any way for any copyright infringement or violation, or the violation of any other person's rights or the violation of any laws, including but not limited to infringement or misappropriation of copyright, trademark or other property right of any person or entity, arising or relating to the Client Software.

## **10. Intellectual Property Rights**

- (a) Service Provider owns and shall continue to own all proprietary rights in all Software that the Service Provider supplies as part of the Services. The Client owns and shall continue to own all proprietary rights in the Systems.

## **11. Representations, Warranties and Indemnifications**

- (a) Service Provider represents and warrants to the Client that:
  - (i) It has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder;

- (II) It shall use commercially reasonable efforts to perform the Services as described in Schedule "A" attached hereto (except to the extent the Services modified by the parties from time to time by mutual written agreement) and shall provide such Services in a professional manner consistent with industry standards.
- (III) Other than the express warranties stated above, Service Provider makes no other representations or warranties hereunder of any kind, either express or implied, in relation to the services, including but not limited to any warranty of merchantability and/or fitness for any particular purpose. In no event shall Service Provider be liable, directly or indirectly, for any special or consequential or incidental damages including but not limited to loss of anticipated profits, loss of revenue or loss of data, or as a result of any interruption of service.

(b) Client and System Vendor Represent and warrant to the Service Provider that:

- (I) They have the right and capacity to enter into this Agreement and fully perform all of their obligations hereunder;
- (II) All Client Software provided hereunder shall be wholly original to the Client or the Client has acquired the necessary rights from third parties for any components of the systems, which shall not violate any laws of any country and shall not infringe any other party's copyright, patent, trademark or other intellectual property right.
- (III) Client and System Vendor shall not, nor shall they allow, authorise or assist any third party to, use the Systems for any illegal purpose whatsoever.

## **12. RELOCATION OF EQUIPMENT**

- a. The Client shall have the right to request the relocation or installation of the SERVER SYSTEM in accordance with clause 12 hereof, upon thirty (30) days written notice given to the System Vendor of such relocation or installation. The System Vendor will be responsible for notifying the Service Provider of the relocation or installation of the SERVER SYSTEM.
- b. Subject to paragraph (c), where the SERVER SYSTEM is being relocated or installed in accordance with paragraph (a), the System Vendor 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 Service Provider or the System Vendor, 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 Service Provider or the System Vendor or their agent, the Service Provider or the System Vendor 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 Service Provider shall advise the Client about the type of insurance needed. Upon mutual written agreement, the Service Provider may take the insurance on behalf of the Client and the Service Provider 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 System Vendor's approval concerning the environment, including power supply, temperature and humidity.
- h. The Service Provider should document and handover all necessary knowledge as well as reports and documentation on the Client's server infrastructure to the System Vendor and Client.

### **13. Termination**

- (a) The parties shall have the right to terminate this Agreement upon 30 days written notice upon:
  - I. Violation or breach by the parties or their employees of any fundamental provision of this Agreement, including, but not limited to confidentiality.
  - II. The termination of the parties' business.
- (b) The Client reserves the right to terminate this Agreement at anytime upon providing the other parties with ninety (90) days' notice.
- (c) The notice of termination of the agreement shall be in writing and shall be by registered letter with acknowledgment of receipt.
- (d) In the case of termination under sub-clause (a)(ii) and (b), this Agreement shall be automatically terminated with no further obligations on the part of the parties.
- (e) In the event of such termination the parties shall mutually agree to settle their respective accounts.
- (f) Notwithstanding the foregoing all provisions hereof relating to confidentiality shall survive the termination of this Agreement.

### **14. Notice**

- (a) Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given (i) when delivered personally to any officer of the party being notified; or (ii) on the third business day after being sent by registered or certified mail, postage prepaid, facsimile telecopier, addressed as follows:

To the Client: [Contact Name]

[SEP] [Address]

[Phone & Fax Number]

To: SYSTEM VENDOR [Contact Name]

[Address]

[Phone & Fax Number]

To: SERVICE PROVIDER [Contact Name]

[Address]

[Phone & Fax Number]

### **15. Independent Parties**

Service Provider, System Vendor and Client are independent parties and neither shall act as the other's agent, or be deemed an agent or employee of the other, nor shall this Agreement be interpreted as creating a partnership or joint venture or otherwise.

### **16. Force Majeure**

(a) Neither Service Provider nor Client shall be liable for failure to meet contractual obligations due to Force Majeure.

(b) Force Majeure impediment is taken to mean unforeseen events,

which occur after signing this Agreement including but not limited to strikes, blockage, war, mobilisation, revolution or riots, natural disaster, acts of God, refusal of license by Government or other stipulations or restrictions by the Government authorities, 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 involved in a case of Force Majeure shall immediately take reasonable steps to limit consequence of such an event.
- (d) The party who wishes to plead Force Majeure is under obligation to inform in writing the other party without delay of the event, of the time it began and its probable duration. 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.
- (f) It is expressly agreed that the Service Provider shall not be liable for the delayed or non-performance of its obligations hereto where same is directly or indirectly linked to the actual or threatened occurrence of a cyclone.

## **17. Severability**

In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the parties agree that the remaining portions of this Agreement shall remain in full force and effect.

**18. Assignment**

Neither party may assign or otherwise transfer this Agreement without the written consent of the other party. This Agreement shall ensure to the benefit of and bind the parties hereto and their respective legal representatives, successors and assigns.

**19. 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.

**20. Governing Law**

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

**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. Entire Agreement**

Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms.

Project for : .....

Project Name :.....

Client's Address :.....

System Vendor's Address :.....

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

DRAWN UP IN THREE (3) ORIGINALS

FOR AND ON BEHALF OF

**CLIENT**

SIGNATURE\_\_\_\_\_

(Authorised Signatory)

NAME : .....

TITLE : .....

PLACE : .....

WITNESS : .....

TITLE : .....

DATE : .....

FOR AND ON BEHALF OF

**SERVICE PROVIDER**

SIGNATURE\_\_\_\_\_

(Authorised Signatory)

NAME : .....

TITLE : .....

PLACE : .....

WITNESS : .....

TITLE : .....

DATE : .....

FOR AND ON BEHALF OF

**SYSTEM VENDOR**

SIGNATURE\_\_\_\_\_

(Authorised Signatory)

NAME : .....

TITLE : .....

PLACE : .....

WITNESS : .....

TITLE : .....

DATE : .....

### **Schedule A1- Services**

1. Hosting of Systems at Service Provider
2. [X] GB of data transfer per month
3. Firewall protection of Systems
4. Back-up of Client data daily on site, weekly off-site
5. Location of Tapes :-
6. [X] megabytes of hard disk storage space
7. Reports, including audience measurement metrics such as [X]
8. Server side software programming
9. Database
10. Service Availability Level :- 99.95%
11. UPS redundancy

## Schedule A2- Services

### 1. Customer Support

#### a. IT Service Desk

An IT Service Desk is intended to provide a Single Point of Contact (SPOC) to meet the communication needs of the Client.

Anyone reporting an incident to the IT Service Desk will be asked to provide the following information:

- Caller's name
- Caller's telephone number
- Time and date the incident occurred
- Nature of the incident
- Number of users affected
- Any action taken by the caller or users

In instances where the IT Service Desk has reason to doubt the source of a call, they may ask the caller for contact details and call back to ascertain the authenticity of the caller.

IT Service Desk Office Hours

**During Normal Office Hours**

09:00 to 16:00 hrs

**Working Days**

Monday to Saturday

After Office Hours officer to be on-call.

Incidents are to be reported to the Service Provider Service Desk, using one of the following methods:

- *E-mail of Service Provider*
- *Telephone of Service Provider*
- *Fax of Service Provider*

**b. Progress of Logged Incidents**

The Service Provider will progress the incidents according to the agreed resolution time targets and service levels. The IT Service Desk will attempt to resolve incidents immediately. If the IT Service Desk cannot resolve an incident, it will be referred to the appropriate technical team within few minutes of logging.

**c. Closing of Logged Incidents**

When the Service Provider has resolved an incident, the support database will be updated with the date, time, and name of the person who resolve the incident and how this was done. Any information communicated between the Service Provider and the Client will be filed in the Client support folder

**d. Accessibility to Building**

<b>During Normal Office Hours</b>	<b>Working Days</b>
09:00 to 16:00 hrs	Monday to Saturday
After Office Hours officer to be on-call	

## **Schedule B – Security Guidelines to be followed at Client Service Provider**

### **1. Purpose**

The purpose of this policy is to ensure that the Client is aware of the security measures taken by the Service Provider and to lay down the minimum Information and IT security measures that Client needs to comply with when making use of the Service Provider Services.

### **2. Scope**

External connections to the Service Provider may create potential security exposures if such connections are not administered and operated correctly and consistently. These security exposures may include non-approved methods of connection to the Service Provider network, the inability to shut down access in the event of a security breach, and hacking. Therefore, the Client, making use of the Service Provider Services, must comply with this Policy.

### **3. Service Provider Security Measures**

Security measures that have been implemented at the level of Service Provider to protect the network include amongst others, the use of firewalls and intrusion detection systems to detect and prevent any unauthorized access through the Internet and via WAN, use of anti-virus software on all servers, segregation of the network into different VLANs for better access control, and scanning of all e-mails and materials downloaded from the internet for viruses and allowing only virus free material through the network.

### **4. Minimum Information Security Measure to be complied with**

4.1 The Client shall ensure that every computer on its premises is equipped with the latest anti-virus and anti-malware software.

4.2 The Client shall also -

- (i) Provide management direction and support for information security.
- (ii) Control access to information.
- (iii) Prevent unauthorized access to information systems and ensure that good password management practices are implemented and adhered to by users.
- (iv) Ensure security is built into its information systems.
- (v) Protect the confidentiality, authenticity and integrity of information.
- (vi) Maintain the security of application software and data.
- (vii) Ensure compliance of information systems with organizational security policies and standards.
- (viii) Ensure the correct and secure operation of information processing facilities.
- (ix) Minimise the risks of software failures.
- (x) Protect the integrity of software and information.
- (xi) Maintain the integrity and availability of information processing and communication.

- (xii) Ensure the safeguarding of information in networks and the protection of any supporting infrastructure.
- (xiii) Always run an anti-virus and anti-malware software on all laptops, personal computers and workstations connected to the Service Provider and ensure that up-to-date anti-virus/anti-malware software are used and that updates of virus definitions are installed.
- (xiv) Never open any file or macros attached to an email from an unknown source. These emails and any attachments shall immediately be deleted and the Trash/Recycle Bin be emptied forthwith.
- (xv) Delete spam, chain and other junk email without forwarding them to any other person.
- (xvi) Never download files or emails attachments from unknown or unauthorized sources.
- (xvii) Avoid direct sharing with read/write access unless there is absolutely a business requirement to do so.
- (xviii) Always scan all removable media for viruses before using them.
- (xix) Always carry updates of anti-virus software through designated and authorized source only.
- (xx) Use authorized and designated sources for the download of virus protection patches.

### **Schedule C - Reporting**

- I. Number of unique visitors

- II. Number of visits to webpages, including date and time of visits
- III. Continually updated report accessible over the Internet regarding problems with Client's Website and Systems downtimes, bandwidth usage, network latency and network availability
- IV. Audience measurement metrics, such as repeat traffic, length of time spent on website, where traffic originates from.
- V. Status of Servers, SAN Storage and Network devices (Uptime / Downtime)

**Schedule D – Bill of Materials (List of equipment to be hosted)**

During the operation if there is any change in the Bill of Material same should be reflected in this Schedule.

**SCHEDULE E**

**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:
  - Service Provider 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 Service Provider 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 Service Provider'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 Service Provider 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)