

ANNEXURE 4 PART III
SOFTWARE MAINTENANCE AGREEMENT

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SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement (SMA) is made and entered this [.....] day of [.....] by and between [

The Government of Mauritius represented by the [.....]
of [.....]
(hereinafter referred to as “**Customer**”) on the one part and

[.....] a Company
incorporated under the Companies Act and having its registered office at
[.....]
represented by [.....]
(hereinafter referred to as “**Company**”) on the other part.

Whereas Company is engaged in the business of [.....]
[.....]

AND

Whereas Customer is desirous of awarding to Company the support and maintenance of the **Software** described in **Schedule I**.

Now, THEREFORE FOR CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

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

- 1.1. "Software" shall mean the Application Software System as delivered and implemented by Company, for the Customer as listed in Schedule I to this Agreement;
- 1.2. "One Support Year" means one calendar year beginning from the date of signing of this Agreement or the date of renewal of the same;
- 1.3. "Support Services" means the Maintenance and Technical Support Services provided under this Agreement Schedule II;
- 1.4. "User" means the person, persons, or organisation, that operate or interact directly with the Software;
- 1.5. "Working Hour/s" shall mean Company's hour/s within the working hours as specified in schedule II;
- 1.6. "One person-day" shall equal eight (8) person-hours;
- 1.7. "One person-month" shall equal twenty-two (22) person-days.

2. TERMS OF AGREEMENT

This Agreement shall be effective when signed by both parties and shall remain valid, for a period of up to 12 months subject to performance in accordance with the obligations of both parties to it.

3. SUPPORT SERVICES

The list of Maintenance and Technical Support Services is described in Schedule II. The nature of Support Services rendered will also include the following activities:

- a) Assist in the identification of cause of errors/bugs, i.e., Hardware, Operating System, RDBMS or Software.

- b) Analysis of Software error messages and taking remedial actions (and preventive measures).
- c) Assist in Software Recovery in case of major system crash and database media (disk error) failure.
- d) To review tablespace usage, indexes, backup procedures and advise on necessary actions to be taken if any, every six months.
- e) Provide cost estimates and time frame with regard to enhancements and modifications as requested by Customer.

3.1. For the purposes of consistency, Company will establish the severity of a reported problem encountered by User in using the Software according to the following definitions:

- i. Catastrophic problem - Software / 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 problems which must be corrected but do not prevent progress from being made, and/or problems which do not require immediate attention. These include:
 - I. isolated, consistently reproducible problem resulting in a system crash;
 - II. failure of a significant function of the Software.
- iii. Minor problem - A problem which does not have a major impact on operation or development, or for which an adequate workaround exists.
- iv. Non-reproducible error - A reported error which Company cannot reproduce.

Company reserves the right to re-classify a reported problem as more information becomes available.

Company will call back User within two hours of initial receipt of a reported problem by User. Company will inform User of the severity level assigned to the problem.

Based on the severity level of the problem, Company will call User back with either :

- a solution,
- a workaround,
- the determination that further research is required,

The call back time after the assessment of the severity level of the problem is as follows:

Severity Level	Call Back Time after the initial call back
Catastrophic	within 4 working hours
Major	within 12 working hours
Minor	within 48 working hours
Non-reproducible	within 72 working hours.

3.2. Company will continue to keep User informed of the problem report resolution progress.

3.3. In the event that Company determines that a problem notified by User has been caused by abuse or misuse of the Software and modules, or by modification, addition and deletion to the said software by some other party (not Company) or by bringing change to the programming environment then:

- i. Customer agrees, if requested by Company, to reimburse Company the cost, calculated on a time and materials basis at Company's then-current rates for work performed by Company in investigating the problem, and
- ii. Company, on request of Customer and/or User, shall advise Customer and/or User whether Company can correct or assist in resolving such problem, and the terms under which Company shall undertake same, and on written acceptance by the Customer and/or User, Company shall correct or assist in resolving the problem in accordance with such terms.

4. CUSTOMER AND USER OBLIGATIONS

- 4.1. Customer and User shall give full access to the location, the Software and equipment to enable Company to provide the Support Services and Customer and User shall make available information, facilities and services reasonably required by Company for the performance of its obligations under this Agreement.
- 4.2. User shall make available to employees of Company the necessary desks and conventional office facilities.
- 4.3. Software, or any part thereof, shall not be in any way added, altered, updated, upgraded, moved nor deleted without the prior written consent of Company.
- 4.4. Customer and/or User shall be deemed to have made provisions for all necessary backups (hardware, software and data) and alternative communication facilities for use during a recovery operation in the event of an emergency.

5. MAINTENANCE FEE AND PAYMENT TERMS

- 5.1. The maintenance fee currently prevailing is as specified in Schedule III to this Agreement.
- 5.2. Alteration to the maintenance price, subject to approval by Customer, shall be incorporated as a term and condition of this Agreement by appending a new version of Schedule III to this Agreement and shall come into effect on the effective date specified therein.
- 5.3. Customer agrees to make payments due to Company under the provisions of this Agreement as specified in Schedule III.
- 5.4. The Agreement shall be for a period of up to 12 months and shall be renewed subject to both parties hereto executing an agreement for same.

6. CONFIDENTIAL INFORMATION

- 6.1. 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”).

- 6.2. 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.
- 6.3. Without prejudice to the generality of paragraphs 6.1 and 6.2, all confidential information which the Customer and/or user may have imparted and may from time to time impart to the Company is proprietary and confidential and the Company –
 - 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 Customer’s and/or User’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 Customer and/or User together with a list of same.
- 6.4. The Company 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 Company shall be liable to damages.
- 6.5. The foregoing provisions shall not prevent the disclosure or use by either party of any Confidential Information to the extent permitted by law.

7. CONTINGENCIES

Customer and/or User shall take the necessary preventive maintenance measures with their respective agencies and vendors including, but are not limited to, drawing up maintenance and/or contingency agreements with these agencies and vendors.

In the event that the Software or Computer System is not functional for a prolonged period of time during a contingency, Customer, User and Company shall agree on a joint decision to put into implementation, the backup operation plans so as to maintain operational continuity.

8. TAXES/DUTIES/LEVIES/RATES

The charges specified in **Schedule III** to this Agreement are inclusive of all duties and taxes applicable to the Government of Mauritius at time of signing the contract. However, if Company is required to pay any new taxes, fees, duties, levies, or rates of whatever description which may be imposed hereafter by the local bodies or any statutory bodies based on this agreement then such taxes, fees, duties, levies, and rates shall be billed in entirety to and paid by Customer.

The above clause shall be deemed to relate to indirect taxes only.

9. CUSTOMER's and USER's LIAISON OFFICER

Customer and User are to appoint authorised personnel(s) who will be the contact person(s) and person(s) responsible for the Software, hardware and Communications as per **Schedule IV**. Such individual shall secure from Customer any authority required by Company for its performance under the contract to issue, execute, grant or provide any approval, waiver, request, notice or other communication required hereunder or requested by Company.

10. APPLICABLE LAW

This agreement shall be governed by, and construed in accordance with the laws of Mauritius. There are no agreements, understandings or representation, express or implied, not specified herein.

11. ARBITRATION

11.1. In the event of any dispute, including its interpretation, between the parties regarding the terms of this Agreement, such dispute shall be resolved amicably by mutual consultation in view of an amicable settlement, during a period not

exceeding 30 days of the date on which a Party has notified the other Party of the existence of such a dispute.

- 11.2. Where the dispute is not resolved during the specified period of 30 days, then such dispute shall be submitted to arbitration to an Arbitrator who shall be designated by mutual agreement by the Parties.
- 11.3. In case of disagreement as to the appointment of the Arbitrator, the most diligent party may apply to the Judge in Chambers for the appointment of an Arbitrator.
- 11.4. The law governing the arbitral proceedings shall be the provisions of the Code de Procedure Civile.
- 11.5. The Arbitrator may be assisted by two independent assessors who shall be designated by mutual agreement between the Parties.
- 11.6. All fees and costs concerning the arbitration, including the Arbitrator's and the assessors' (where they are designated) fees and expenses, shall be borne equally between the Parties.
- 11.7. The determination of the Arbitrator shall be binding and conclusive and shall not be subject to appeal.
- 11.8. The Parties agree that, notwithstanding any matter which is the subject of arbitration proceedings, the obligations of each Party arising out of the Agreement shall continue to exist and neither Party shall be entitled to stay any action or not performing any obligation under the Agreement.
- 11.9. In case of proven failure of contractor under its contractual commitments, Contractor shall only be liable for direct and certain damages suffered by the Customer capped to the contractor's fees as perceived by Contractor for rendered services (all damages aggregated and taxes excluded). Indirect damages are expressly excluded.

12. FORCE MAJEURE AND CYCLONES

- 12.1. Neither Company nor Customer shall be liable for failure to meet contractual obligations due to Force Majeure.
- 12.2. 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.

- 12.3. The party involved in a case of Force Majeure shall immediately take reasonable steps to limit consequence of such an event.
- 12.4. 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.
- 12.5. 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.
- 12.6. It is expressly agreed that the Company 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.

13. TERMINATION

- 13.1. 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 and payment.
 - ii. the termination of the parties' business.
- 13.2. In the above circumstances, this Agreement shall be automatically terminated with no further obligations on the part of the parties.
- 13.3. In the event of such termination the parties shall mutually agree to settle their respective accounts.
- 13.4. Notwithstanding the foregoing all provisions hereof relating to confidentiality shall survive the termination of this Agreement.

14. 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, that either party's interests shall be assignable through merger, consolidation or reorganisation or sale or transfer of substantially all its assets.

15. 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.

16. NOTICE

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 or by ordinary mail, postage prepaid or telefax addressed to the party for which it is intended.

17. 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.

18. ENFORCEABILITY

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

19. RENEWAL OF AGREEMENT

This agreement is for a maximum period of one year as from the date of signing of same and will be renewed for further periods of one year each subject to both parties hereto executing an agreement for same.

20. 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 : [.....]

User's Address : [.....]

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
CUSTOMER

FOR AND ON BEHALF OF
COMPANY

SIGNATURE [.....]
(Authorised Signatory)

SIGNATURE [.....]
(Authorised Signatory)

NAME : [.....]

NAME : [.....]

TITLE : [.....]

TITLE : [.....]

PLACE : [.....]

PLACE : [.....]

WITNESS : [.....]

WITNESS : [.....]

TITLE : [.....]

TITLE : [.....]

DATE : [.....]

DATE : [.....]

SCHEDULE I

List of Software already installed and/or to be installed

[

]

SCHEDULE II

List of Maintenance & Technical Support Services

1. Services and Excepted Services:

The Maintenance Services that will be supplied to the Customer shall comprise of the following services: 'Preventive Maintenance', 'Curative Maintenance' and 'Mandatory Engineering Changes' (as respectively defined below) in respect of the Application Software.

- a. Preventive Maintenance shall comprise the routine inspection and testing by the Company of the Application Software;
- b. Curative Maintenance shall comprise all or any of the following categories of services listed below which have been opted for by the Customer:
 - upon receipt of a request from the Customer, the inspection, testing and diagnosis of any fault reported in the Application Software
 - upon receipt of a request from the Customer, the carrying out of such repairs by issuing such fixes in relation to the Application Software or otherwise as judged necessary to remedy the fault reported. This also covers the provision of upgrades and updates to Application Software due to bug fixes.
- c. Mandatory Engineering Changes shall comprise of the implementation of such mandatory alterations, adjustments, additions or modifications to the Application Software.

Services to be provided in consideration for the Maintenance Charges shall not include Excepted Services. Excepted Services shall comprise of but shall not be limited to the diagnosis and rectification of a fault in the Application Software resulting from:

- the improper use, operation or neglect of the Application Software;
- any repair, adjustment, alteration or modification of the Application Software by any person other than the Company without the Company's prior written consent;

Upon request by the Customer for the provision of all or any of the Excepted Services, Company shall supply same subject to the levying of Additional Charges.

2.0 Remote Support Services

- a. Help Desk Services within Normal Office hours as specified within the Call Window below;

- b. Support by Telephone and Fax, logging of calls placed;
- c. Support by remote access;

3.0 On Site Support

- a. Company shall send its Support Engineer/s to support Customer in the event that the Support Services provided above is not able to resolve the issue at hand;
- b. On Site support shall be rendered if User has performed all recommended actions by Company's Support Services personnel and has reported all the necessary diagnostic information including but not limited to error logs' print-outs, messages and relevant problem information.
- c. All On-Site support shall be rendered within the Call Window as specified below.

4.0 Upgrades, Updates, Modifications and Enhancements (Normal software maintenance)

- a. Preventive and curative maintenance services, mandatory engineering changes as specified in Section 1 of Schedule II of the maintenance contract, shall be provided at no additional costs.
- b. The company will also supply an aggregate number of work/person effort equivalent to **60%** of the total maintenance fees paid for the contractual period ([.....] work/person days/months). Such work would be undertaken during the currency of the contractual period for the purposes of carrying out modifications, enhancements and/or development upon request for same by the customer.
- c. For modifications, enhancements and/or development above the total [.....] person-month's effort, Company shall forward the scope, duration and cost for such development to Customer for approval. Company shall proceed with the development only after this approval has been obtained.
- d. Whenever major modifications are brought to the Software covered in this Agreement, after discussions with User, Company shall provide:
 - Implementation and Test Plan;
 - Migration Plan (with approval from User);
 - Basic Training;
 - Documentation Update on hard copy and/or magnetic media.

5.0 Call Window

a. Normal Office Hours

Mondays to Fridays 8.45 am to 4.00 pm

Saturdays 8.45 am to 12 noon

All Remote Support and on site services are available.

b. Outside Office Hours

Mondays to Fridays 4:00 pm to 8.45am next working day

Saturdays &

Holidays Eves 12 noon to 12 midnight

Sundays and

Public Holidays 12 midnight to 8.45am next working day

SCHEDULE III

SCHEDULE OF RATES AND CHARGES

1.0 Annual Maintenance & Technical Support Services covering:

- a. Remote Support Services;
- b. On Site Services during Normal Office Hours; and
- c. Upgrades, Updates, Modifications and Enhancements where applicable

Rupees [.....]

Payment shall become due to the first day of each Support Year beginning from the effective signing date of this Agreement.

2.0 UNIT Rates for :

- a. Upgrades, Updates, Modifications and Enhancements where applicable

One PERSON-DAY or part thereof :

[.....] Only Rs [.....]

One PERSON-MONTH or part thereof:

[.....] Only Rs [.....]

- b. Support OUTSIDE OFFICE HOURS

One Hour or part thereof:

[.....] Only Rs [.....]

SCHEDULE IV

Authorised Personnel

Responsible for Customer Department (**CUSTOMER LIAISON OFFICER**):

Full Name	{	}
National ID. Number	{	}
Designation, Department	{	}
Telephone & Facsimile	{	}

Responsible for User Department (**USER LIAISON OFFICER**):

Full Name	{	}
National ID. Number	{	}
Designation, Department	{	}
Telephone & Facsimile	{	}

Responsible for User Department, Software (**USER APPLICATION OFFICER**):

Full Name	{	}
National ID. Number	{	}
Designation, Department	{	}
Telephone & Facsimile	{	}

Responsible for all Hardware, System Software, Backup, Restore, Housekeeping and Communications facilities (**SYSTEM ADMINISTRATOR**):

Full Name	{	}
National ID. Number	{	}
Designation, Department	{	}
Telephone & Facsimile	{	}

Responsible for Company, Liaison with User and Customer (**DIRECTOR/MANAGER**):

Full Name	{	}
National ID. Number	{	}
Designation, Department	{	}
Telephone & Facsimile	{	}

Responsible for Software from Company (**MANAGER/PROJECT LEADER**):

Full Name	{	}
National ID. Number	{	}
Designation, Department	{	}
Telephone & Facsimile	{	}