**ANNUAL MAINTENANCE CONTRACT FOR SOFTWARE SERVICES**

## This Annual Maintenance Contract for Software Services (the "**AMC Contract**") is executed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**Effective Date**”) by and between **Dynamic Vishva** having PAN Number ACRPW4139R, with its principal place of business at 202,A wing,Twin Arcade,Near Marol Post office,Military Road,Marol,Andheri East,Mumbai-400059 ("**Supplier**") and **\_\_\_\_\_\_\_\_\_\_\_\_** having with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_("**Licensee**")

Whereas:

1. The Supplier has licensed to the Licensee the software package described in Exhibit A to this AMC Contract ("the Maintained Software");
2. The Licensee desires to obtain software maintenance for the Maintained Software on the terms and conditions set out in this AMC Contract.

Therefore, for mutual consideration mentioned in this AMC Contract, the parties hereby agree as follows:

1. **SOFTWARE MAINTENANCE:** The Supplier will provide the Licensee with software maintenance as defined in, and in the manner as set out in, this Section 1 and other maintenance services if required by the Licensee from time to time and agreed by the Supplier on and subject to the terms and conditions of this AMC Contract. "Software Maintenance" for the purposes of this AMC Contract shall mean the following:
2. Technical Support: Supplier will provide technical support as described in Exhibit B. The Supplier shall provide such other assistance which it, in its absolute discretion, shall deem reasonably necessary to overcome any issues with the Maintained Software from time to time.
3. Program Updates and Version Modifications: The Supplier will supply the Licensee with updates to the Maintained Software to correct errors in programs which have been brought to the attention of the Supplier and in addition, will supply any new revisions or modifications to the general release version of the Maintained Software as nominated by the Supplier, except that the Licensee shall be obliged to reimburse the Supplier for the actual cost of any new subscription or infrastructure.
4. **SOFTWARE TESTING AND UPGRADES:** The Supplier will provide the Licensee with software testing and upgrades as defined in, and in the manner as set out in, this Section 2:
5. Testing: The Licensee is responsible for testing the Maintained Software in respect of any item unit or module of the Maintained Software.
6. Upgrades: The Supplier will make such modifications to the Maintained Software as are appropriate for the purposes of upgrading any item unit or module thereof. Functionality will be maintained in accordance with the published specification of the Maintained Software. The Supplier's software upgrade service shall include:
   1. Reviewing the Maintained Software release notes;
   2. Attending to any problems as listed in Exhibit B arising from system testing undertaken by the Licensee with the Maintained Software as upgraded from time to time;
   3. Retesting any changes made;
   4. Issuing a new release of the Maintained Software for the changes made;
   5. Documenting all changes.
7. Supplier's exclusion of liability: The Supplier is not responsible for and shall not be liable for:
   1. The integrity of any live or active data the Licensee may use when testing or using any software upgrades or software bug fixes;
   2. Any loss or potential loss of revenue from any software or hardware modifications.
8. **SERVICE FEE:**
9. The Licensee shall pay to the Supplier an annual maintenance fee at the rate and at the time specified in Exhibit C.
10. All goods and services tax (if any) payable in respect of the Software Maintenance provided by the Supplier under this AMC Contract shall be payable by the Licensee.
11. The Supplier may review its standard rates for the Software Maintenance and other maintenance services annually as at each anniversary of the Effective Date of this AMC Contract.
12. In addition to the requirement to pay an annual maintenance fee, the Licensee shall reimburse to the Supplier the amount of any expenses incurred by the Supplier in connection with this AMC Contract (including Google cloud hosting, Godaddy SSL certificate, SendGrid subscription or any other third-party services /subscriptions purchased by the Supplier for Licensee at actual cost.) upon receipt of a tax invoice supplied by the Supplier on a quarterly basis.
13. All fees shall be paid by Licensee to Supplier on Yearly basis. The Licensee understands and acknowledges that payment of the fee as mentioned in Exhibit C is a precursor to the commencement of this AMC Contract. All expenses shall be paid by Licensee to Supplier within 7 days from the date of receipt of an invoice. In the event there is a delay in payment for more than 10 days from the due date, the Licensee shall be liable to pay an interest of 1.5% per month or maximum permitted by applicable law, whichever is less, on the delayed payments from the due date of payment. Supplier shall be relieved of its obligations under this AMC Contract in the event of nonpayment of the fees or expenses due.
14. **TERM AND TERMINATION:**
15. “Annual software maintenance period” for the purpose of this AMC Contract shall mean the period of twelve (12) months commencing from the Effective Date of this AMC Contract and each subsequent period of twelve (12) months during the continuance of this AMC Contract.
16. This AMC Contract shall continue in force until terminated in any of the following ways:
    1. By either party giving thirty (30) days' prior notice in writing before the expiration of any annual software maintenance period;
    2. If either party is in breach of any of the conditions of this AMC Contract and if after written notice of the breach has been given to such party by the non-breaching party, the party fails to rectify the breach within thirty (30) days after receiving such notice, the non-breaching party may terminate this AMC Contract at the expiration of the said thirty (30) days. The non-breaching party’s right to terminate shall be in addition to any other remedies available to it for any such breach;
    3. Immediately, if the Licensee's license to use the Maintained Software is terminated in which event the Supplier's obligations under this AMC Contract shall terminate immediately.
    4. Immediately, if the software content of the Maintained Software or the environment in which it executes is altered by the Licensee without the prior written consent of the Supplier.
17. In case of early termination of the AMC Contract,
18. By Licensee without giving any justified reason, 100% of AMC Contract amount paid shall be retained by the Supplier.
19. Due to a breach of any provision of this AMC Contract by Licensee, 100% of AMC Contract amount paid shall be retained by Supplier.
20. Due to a breach of any provision of this AMC Contract by Supplier, AMC Contract amount for remaining unused hours at the time of termination will be refunded by Supplier to Licensee.
21. **EXCLUDED MAINTENANCE SERVICES:** The following services are not included in the Software Maintenance:
22. Repair of damage arising from changes, alterations, additions or modifications by a person not approved by the Supplier to undertake that work.
23. Repair of damage arising from a negligent act or misuse or omission of the Licensee its employees or representatives.
24. Repair of damage caused by the failure of electrical power, air conditioning, humidity control or any environmental factor at the Licensee’s end.
25. Repair of damage caused by the operation of the Licensee's hardware other than in accordance with the directions or recommendations of the hardware supplier or its servants or agents;
26. Repair of damage caused by an act of God, by flood or by fire not arising from the fault of the Supplier;
27. Request for additional services. Provided that, at the Licensee's request the Supplier may provide any of the services not covered under this AMC Contract but the Supplier may impose an extra charge for doing so.
28. Request for repair for changes made by Licensee or any third-party service provider on the Licensee’s pages.
29. **PERSONNEL:**
30. The Licensee must nominate a maximum of one staff members to act as support liaison between the Supplier and the Licensee. Only these nominated staff members may request support from the Supplier. Such staff members may be altered from time to time by written notice in order to reflect changes in staff.
31. The Supplier shall nominate a specific person as the single point of contact and shall submit to the Licensee, the name and contact details, including address, telephone number, mobile number, FAX number/email address of this contact person and the service engineers at each of these locations.
32. In addition to single point of contact, the Supplier should also provide the contact details of customer support officials to whom calls should be escalated.
33. The Supplier shall provide details of an escalation matrix up to three levels, mentioning names, designation and contact details of the officials concerned.
34. The Licensee agrees not to solicit or attempt to entice into employment any present or former employee, member or consultant (collectively referred to as “Personnel”) of the Supplier, whether salaried or contracted, during the term of this AMC Contract and for 24 months thereafter. The Licensee shall also not refer such Personnel to any third party. This obligation of the Licensee shall also extend to the candidates nominated by Licensee for interview or screening purposes.
35. **INTELLECTUAL PROPERTY RIGHTS:**
36. The Licensee shall have all the ownership and proprietary rights, including all Intellectual Property Rights (‘IPRs’), in and to any deliverables developed under this AMC Contract by Supplier’s resources for the Licensee.
37. Supplier and its consultants shall provide any reasonable assistance, at the Licensee’s cost, which the Licensee may need in applying for registration of such IPR or otherwise, perfecting its title to them.
38. Licensee acknowledges that in developing or furnishing the services or deliverables, Supplier may utilize its background proprietary intellectual property right(s), methodologies, tools, models, software, procedures, documentation, know-how and processes owned by Supplier (“Supplier Background Materials”) i.e. such material which is owned or controlled by Supplier prior to this AMC Contract; or is independently created and developed by Supplier any time during the term of this AMC Contract; or licensed to Supplier by a third party. The ownership and title of such Supplier background Materials shall always remain with Supplier alone.
39. **CONFIDENTIALITY**:
40. During the tenure of this AMC Contract, the Supplier/ Supplier’s engineers may have access to confidential information of Licensee for the purpose of resolving any issue covered by this AMC Contract.
41. The Supplier or engineer shall not disclose at any point of time to any other person/ third party the information so received and shall use the same degree of care to maintain the confidentiality of the information as if the information is their own.
42. The Supplier may use the information only for serving Licensee interest and restrict disclosure of information solely to those employees of Supplier having a need to possess such information in order to accomplish the purpose stated above and also advise each such employee, before he or she receives access to information, of the obligation of Supplier under this AMC Contract and require such employees to maintain these obligations.
43. **INDEMNITY**:

Either Party shall defend, hold harmless and indemnify other party, its affiliates and personnel from and against any and all losses, liabilities, costs and expenses (including taxes, fees, fines, penalties, interest and attorneys' fees and disbursements) as incurred by the either party arising out of, or relating to any loss or damage to the person or property of either party’s employees, consultants or contractor’s employees or as a result of the either party’s furnished items infringing (whether directly or contributory with any other item) any third party's Intellectual Property Rights.

1. **LIMITATION OF LIABILITY**
2. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, BUSINESS INTERRUPTION) ARISING OUT OF OR IN CONNECTION WITH THIS AMC CONTRACT OR THE USE OR PERFORMANCE OF THE SOFTWARE OR SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
3. IN ANY EVENT, SUPPLIER’S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT OR UNDER ANY OTHER FORM OR LIABILITY) FOR DIRECT DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM SUPPLIER’S NEGLIGENCE, SHALL IN NO EVENT BE GREATER THAN FIFTY PERCENT (50%) of the total service fee payable to Supplier under this AMC Contract.
4. **GENERAL**
5. Assignment: Licensee will have no right to assign this AMC Contract, without Supplier’s prior written consent. Any attempt to assign this AMC Contract, without such consent, will be null and void.
6. Force Majeure: Except for the payment obligation of the parties under this AMC Contract, neither party will be responsible for any failure or delay in its performance under this AMC Contract, due to a Force Majeure Event (as defined below).

If the party claiming Force Majeure Event has complied with this clause , its performance under this AMC Contract shall be suspended and automatic extension of time which will not exceed 45 (forty-five) days will be applicable. If delay or stoppage continues for more than 45 days, either party may terminate this AMC Contract and neither party shall be liable to the other for such termination. However, the obligations of both the parties up to the date of occurrence of Force Majeure Event shall continue to be in force.

A Force Majeure Event shall include but not be limited to, causes beyond parties reasonable control, including but not limited to labor disputes, strikes, lockouts, shortages of or inability to obtain labor, earthquake, flood, lightening, fire, epidemics, pandemics and consequences thereof; accident, strike, riot, civil commotion, war or other violence, Force Majeure events such as – i) break down in internet and/or communication systems, ii) malware or virus attack iii) crash of software – as long as cause of such events are not attributable to Supplier , any law, or regulation of any government, or any act or condition whatsoever beyond the reasonable control of any party (each such event shall be called a “Force Majeure” event).

1. Subcontracting: The Supplier shall have the right to sub-contract its obligations under this AMC Contract without obtaining the Licensee’s consent.
2. Counterparts: This AMC Contract may be executed in several counterparts, all of which taken together shall constitute one single AMC Contract between the parties. Signatures transmitted via facsimile shall have the same force and effect as the equivalent original of such signature.
3. GoverningLaw; Venue:
   1. This AMC Contract shall be construed and governed by the laws of India.
   2. The parties shall resolve any difference or dispute arises out of this AMC Contract by way of negotiations. If such negotiation process fails, then all disputes arising from or related to this AMC Contract shall be resolved by arbitration.
   3. The arbitration proceedings shall be conducted at Mumbai in English language and in accordance with the rules of Arbitration and Conciliation Act, 1996, (as amended from time to time) by a sole arbitrator to be mutually appointed by the parties.
   4. All decisions and awards rendered by the arbitrator will be final and binding upon the parties for all questions submitted to such arbitrator and the costs associated with such submission shall be shared equally by the parties involved in the dispute.
4. Entire Agreement***.*** This AMC Contract constitutes the complete and exclusive statement of the agreement between the parties and supersedes all prior oral and written agreements, communications, representations, statements, negotiations and undertakings relating to the subject matter herein.

**IN WITNESS WHEREOF**, the parties have caused this AMC Contract to be executed as of the day and year first written above.

| **Licensee**  **(\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)** | **Supplier**  **(Dynamic Vishva)** |
| --- | --- |
| **Name : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Name : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Designation : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Designation : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

**EXHIBIT A – MAINTAINED SOFTWARE**

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**EXHIBIT B – TECHNICAL SUPPORT**

1. **Scope of Work**
2. Take complete database and code backup every Month.
3. Coordinate with hosting provider to troubleshoot server issue.
4. Minor issues fixing (minor means issue which takes less than 2 hours)
5. When a Licensee raises a ticket for any issues, Supplier shall will check the feasibility and share estimates in 3 working days(excludes Dynamic Vishva holidays, Saturday and Sunday) after receiving the ticket and get agreed on schedule before starting the work.
6. Holiday calendar will be shared to the Licensee by Supplier before the contract start date.
7. Licensee and Supplier will provide a single point of contact for application related discussion.
8. Content viz. text, photos/images and any other input specifically related to product/services for the said application will be provided by the Licensee in digital format as per agreed dimension and size.
9. Acceptance of the issue closure will be given from the Licensee end within 2 days of web application delivery from the Supplier’s end.
10. The Supplier may, with the Licensee’s consent, perform periodic updates or additional needed modifications to the application being maintained.
11. Application hosting platform / infrastructure will be provided by Licensee that includes but not limited to cloud server, SSL, subscriptions to any online services like payment gateway, SMS, email, chat, google map etc.
12. **Changes / Additional work / New Development (Not Included under AMC Contract):**
13. Any changes over the above set criteria under Scope of Work
14. Integration of third-party applications
15. Emergency assistance (extra costs apply as per the per hour rate)
16. Addition of new features
17. Revisions to be made to the existing features
18. Removal of the existing features
19. Changes to web structure, design, navigation or functionality
20. Bug fixing [other than minor bugs (criteria mentioned in above Scope of Work)]
21. Deployment on new server or server update
22. Database backup script
23. Any other work which is not covered in the Scope of Work as detailed above.

**EXHIBIT C - FEES**

## **Service Fees**

1. First Year Annual Maintenance is free of charge for **\_\_\_\_\_\_\_\_\_** hours of annual support (no carry forward to subsequent year)
2. Annual Maintenance Cost for subsequent year - Rs. **\_\_\_\_\_\_\_\_\_** for **\_\_\_\_\_\_\_\_** hours of annual support (no carry forward to subsequent year).
3. For any additional support, above the hours agreed in point above, Licensee shall release a Purchase Order after which work will be commenced and the charges will be Rs. 700 per hour for the same.
4. 18% GST will be charged extra as per the government rule on any amount agreed for work.

## **Terms of Payment**

1. In case of AMC 100% advance shall be paid on quarterly basis.
2. There shall be a 10% increase in fees after the expiry of one (01) year from the Effective Date.