

APPENDIX-E

MAINTENANCE OF A SECTOR BENCHMARKING AND DATAMING SYSTEM

THIS CONTRACT is entered into by and between THE AFRICAN DEVELOPMENT BANK (hereinafter called the “Bank”), an international financial institution having its headquarters in Abidjan, Avenue Joseph Anoma, 01 B.P. 1387, Abidjan, CÔTE d'IVOIRE and currently operating from its Temporary Relocation Agency in Tunis, 15 Avenue du Ghana, BP 323 – 1002 Tunis Belvédère, TUNISIA, of the one part and IQSIM (hereinafter called the “Supplier”), a company duly incorporated and existing under the laws of, whose principal place of business is located at –....., represented by its General Manager, of the other part.

Parties mean the Supplier and the Bank collectively, and **Party** means any one of them, as the context may indicate.

WHEREAS the Bank and the Supplier have agreed, in accordance with Section E of the General Conditions of Maintenance of a Sector Benchmarking and Dataming System, that the Supplier shall provide maintenance, support and routine assistance for the duration of this contract.

NOW THEREFORE, the parties hereto agree as follows:

1. SCOPE AND TERM OF CONTRACT

- 1.1 The purpose of this Contract is to describe the Supplier's responsibilities in the Maintenance of a **Sector Benchmarking and Dataming System**. The Supplier shall perform the services and carry out its obligations with due diligence, efficiency and economy, in accordance with standards specified in the Service Level Agreement. The Supplier shall observe sound management practices, and employ as appropriate advanced technology and safe method. In respect of this Contract, the Supplier shall always act as a faithful adviser to the Bank and shall at all times support and safeguard the Bank's legitimate interest in any dealings with sub contractors or third parties.
- 1.2 This Maintenance Contract shall remain valid for a period of one year commencing on the day following the start date of the one year Warranty period in accordance with the General Conditions of Maintenance contract of a **Sector Benchmarking and Dataming System**, concluded between the Bank and the Supplier. Upon expiry of its term, this Contract may be renewed for further periods of one year each up to a maximum of four (4) consecutive years, on such terms and conditions as the parties may decide.
- 1.3 The Supplier warrants that it is qualified by the manufacturer, in case of third party products, to supply and provide maintenance services, technical or help desk support, new version upgrade and/or other services related to the equipment and

software installed. The Supplier further warrants that its work will not negatively affect the performance of the system.

2. MAINTENANCE FEES - PAYMENT TERMS

2.1 In consideration of the provision of maintenance services hereunder, the Bank agrees to pay to the Supplier an amount not exceeding (.....) as Annual Maintenance Fee, for each year. Payment shall be effected after receipt of itemized invoice from the Supplier indicating the breakdown of service charges.

2.2 The Annual Maintenance Fee shall be paid at the end of each billing period (year) on presentation to the Bank of appropriate invoices and supporting documents. Payment shall be made by the Bank within thirty (30) days of receipt of the relevant invoice and related documents including certification by a competent authority that the services have been rendered.

3. OBLIGATIONS OF THE SUPPLIER

3.1 MAINTENANCE OF HARDWARE AND SOFTWARE EQUIPMENT SERVICES

- Support and Routine Assistance

The Supplier's support personnel shall be available to assist and consult with the staff of the Bank 12 hours per day five days per week. The Supplier shall provide necessary support services to answer questions and to assist the Bank in resolving problems related to the use and operation of the Software supplied and installed by the Supplier. The Supplier shall be responsible for training the Bank's Staff to operate new and/or upgraded Solution. The Supplier shall appoint a Local Agent and notify the name to the Bank in case it is not physically present in the Bank's host country.

- Errors and Corrections of defects for the products

The Supplier agrees to correct defects of the products sold to the Bank and to supply replacements to the Bank at no additional charge. The Bank agrees to report promptly to the Supplier any and all defects in, or problems with, the devices, which it may discover. The Supplier shall correct the defects promptly after they are discovered by the Bank or are reported by the Supplier.

- Enhancement and New Releases of Software and Documentation

The Supplier shall provide and install, at no additional cost to the Bank all new versions, releases, and updates for all security related Software that are used in the System, within thirty (30) days of their availability from the supplier to its clients and not later than three (3) months after they are released in the country of origin of the Software. New releases of the Software shall be supplied on CD ROM or as a download via the Internet. Appropriate documentation and installation instructions with respect to new releases shall also be provided. The Bank agrees,

with the effective support of the Supplier's Local Representative Agent, to install each new release of Software as soon as possible.

3.2 SERVICES

Support and Routine Assistance.

The Supplier's support staff shall provide telephone support services to answer questions and to assist the Bank, either on the phone or through on-site intervention, in resolving problems related to the use and operation of the Equipment and software. The Supplier shall undertake regular preventive maintenance of the Bank's Equipment and software. This task shall include, among other duties, the replacement of defective parts or of parts the performance of which is affected by wear caused by the normal operation of the System, in a way that is likely to adversely affect the smooth operations of the Equipment and software.

4. CONTRACT AMENDMENTS

No variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

5. ASSIGNMENT

The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Bank's prior written consent.

6. SUBCONTRACTS

The Supplier shall notify the Bank in writing of all subcontracts awarded under this Contract. Such notification shall not relieve the Supplier from any liability or obligation under the Contract.

7. DELAYS IN THE SUPPLIER'S PERFORMANCE

All services to be performed under this Maintenance Contract shall be provided by the Supplier in accordance with the time schedule prescribed hereunder. If at any time during performance of this Contract, the Supplier should encounter conditions impeding timely delivery of and the performance of the Services, the Supplier shall promptly notify the Bank in writing of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Bank shall evaluate the situation and may at its discretion extend the Supplier's time for performance or terminate the Contract with or without claiming liquidated damages from the Supplier.

11. GOVERNING LANGUAGE

The Contract shall be written in the English language. All correspondence and other documents pertaining to the Contract, which are exchanged by the parties, shall be written in English or French.

12. GOVERNING LAW

This Contract shall be governed and interpreted in accordance with English Law, excluding its conflicts of law provisions.

13. TAXES AND DUTIES

The Bank, its assets, property, operations, transactions and income are exempt from all forms of taxation in accordance with the provisions of the Agreement establishing the African Development Bank. Accordingly, the Supplier shall not claim from the Bank any taxes, levies, licence fees or any other such charges in relation to this Contract which are paid or may be payable to the municipal/local Council or any other responsible Authority in relation to this Contract and or the Services provided under this Contract.

14. CORRUPTION

The Supplier states that no employee of the Bank involved in the award of this contract, has received, or will received, directly or indirectly, any kind of benefit or advantage from the Supplier or its affiliates, resulting from the award of the Contract or its implementation.

15. NOTICES

Any notice, request or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered to an authorized representative of the party to whom the communication is addressed, or when sent by registered mail or facsimile to such party at the address specified below:

For the Bank: The Manager, Corporate Procurement Division,
 General Services Department (CGSP),
 African Development Bank,
 Temporary Relocation Agency (TRA)
 Tunis, Tunisia.

For the Supplier: The General Manager
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16. ENTRY INTO FORCE

This Contract shall be effective on the day following the expiry date of the two year warranty period as specified in Article 1.2 of this Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed in their respective names by their duly authorized representatives, on the respective dates specified below.

FOR AFRICAN DEVELOPMENT BANK

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.....
CORPORATE PROCUREMENT DIVISION (CGSP.2)

Date

FOR

.....
GENERAL MANAGER

Date