SOFTWARE MAINTENANCE AGREEMENT

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This Software Maintenance Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Company"), a company organised and existing under the laws of [Country], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SERVICE PROVIDER NAME]** (the "Service Provider"), a company organised and existing under the laws of [Country], with its head office located at:

[COMPLETE ADDRESS]

WHEREAS the Company and the Service Provider have concluded a Value Added Reseller Agreement (hereinafter referred to as the “VAR Agreement”) on, [DATE] with respect to certain Software Products referenced in Schedule [SPECIFY] to the said Agreement (hereinafter referred to as the “Software”);

WHEREAS the Company wishes to sell to the Provider and the Provider wishes to purchase from the Company the services of maintenance and support for the Software under this Agreement;

NOW, THEREFORE, consideration of the mutual promises herein, the Service Provider and the Company agree as follows:

1. **SCOPE OF AGREEMENT**

During the term of this Agreement, as outlined in Section 2, the Company agrees to furnish to the Service Provider the following services for the maintenance and support of the Software (which shall hereinafter collectively be referred to as the “Services”):

* 1. **Software Update and Correction Service**

As part of the Software Update and Correction Service, the Company shall promptly provide to the Service Provider:

* + 1. any known problem resolutions relating to the Software as such resolutions become known to the Company;
    2. corrections for problems that the Company diagnoses as defects in a currently supported version of the Software;
    3. all modifications, refinements, and enhancements (“Improvements”) which the Company incorporates into and makes a part of the Software;
    4. new releases of the Software which the Company elects to make available to its general client base;

**1.2. Telephone Support Service**

Telephone Support Service includes the Service Provider having direct telephone access to employees of the Company who have the necessary technical expertise and experience to understand and solve the Service Provider’s inquiries concerning the Software failing to work as set out in the VAR Agreement and to clarify Documentation when same is either insufficient or unclear. Such direct telephone access shall be available Monday to Friday, exclusive of statutory holidays, from [HOUR] to [HOUR] [SPECIFY TIME ZONE]. The Company shall be obligated to provide a response to such telephone inquiries as soon as is practically possible but, in no event, shall such response take more than [NUMBER] business hours to provide. In the event that such response is not satisfactory to the Service Provider, acting reasonably, the Company shall promptly provide Software Repair Services.

**1.3. Software Repair Service**

Should the Software not operate as set out in the VAR Agreement, the Company will promptly repair the Software at no additional charge to the Service Provider.

**2. TERM**

The term of this Agreement shall be the same as that of the VAR Agreement.

**3. CHARGES AND PAYMENT**

Upon execution of this Agreement, the Service Provider shall pay the Company the sum of [AMOUNT] on a [WEEKLY/MONTHLY/ANNUAL] basis, which represents the total amount that the Service Provider will pay for the Services provided by the Company under Schedule [SPECIFY].

**4. WARRANTY**

The Company warrants for a period of [NUMBER] days from the date of their services being rendered, the Company will remedy the problem to which they are related.

**5. EQUIPMENT/SOFTWARE**

The COMPANY shall use the equipment (hardware and software) provided by the Service Provider solely for the provision of the services covered under this Agreement.

**6. INSURANCE**

The Company hereby accepts total responsibility for the equipment provided by the Service Provider under Section 5 above. Company shall provide the Service Provider with a certificate of insurance indicating coverage for at least [AMOUNT] to cover its liability in the event the equipment is damaged or destroyed. The certificate shall specifically cover the equipment provided by the Service Provider under Section 5 above and shall name the Service Provider as a beneficiary *in re*spect of losses or claims. Such insurance shall remain in full force and effect throughout the term of this Agreement.

**7. NON-DISCLOSURE**

The provisions governing Non-Disclosure set out in the VAR Agreement in Article [NUMBER] shall apply to this Agreement *mutatis mutandis*.

**8. TITLE TO WORK**

Upon payment being made in accordance with the terms of this Agreement, all title, rights and interest in all software, printed material and other physical media containing designs, symbols, inventions and reports performed, created or written in accordance with this Agreement along with any rights of intellectual property related thereto, including but not limited to patents, copyrights, trademarks and industrial designs (hereinafter referred to as the “Work”) shall vest in and inure to the benefit of the Service Provider.

At the Service Provider’s request, the Company shall sign any additional documents necessary (as the case may be) to give full effect to the Service Provider’s title to the Work. Moreover, upon completion of the Work, the Company shall make any of its employees involved in the performance of the Work, sign an assignment of all rights of intellectual property and a waiver to any moral rights, as defined in the [COUNTRY] Copyright [ACT/LAW/RULE] they may have in the Work and provide the Service Provider with evidence of such waiver at the Service Provider’s request.

**9. INDEMNIFICATION**

The provisions governing indemnification of the Service Provider by the Company set out in articles [NUMBER] and [NUMBER] of the VAR Agreement shall apply to this Agreement *mutatis mutandis* and, in particular, to the Services.

**10. CHANGES IN THE SERVICES**

The Service Provider may, at any time, without invalidating this Agreement, order services in addition to the Services or request to make changes to the Services. The compensation and time limits of the Agreement shall be adjusted accordingly. The aforementioned changes shall be undertaken by the Company only upon written authorisation of the Service Provider.

**11. TERMINATION FOR DEFAULT**

Notwithstanding the non-termination of the VAR Agreement, should the Company be in default under any provision of this Agreement, or fail to perform or execute the services, in the manner contemplated herein, the Service Provider, may, at its discretion, terminate this Agreement by giving the Company [NUMBER] days prior written notice of termination, or obtain the services of third party personnel and the Company shall indemnify the Service Provider for all additional costs resulting therefrom.

Upon termination, the Company shall return all equipment provided by the Service Provider to the Company under Section 5 above.

**12. ASSIGNMENT**

This Agreement may not be assigned or subcontracted in whole or in part by the Company without the prior written consent of the Service Provider. An assignment or a subcontract shall not release the Company from its obligations hereunder. The Service Provider can assign this contract, in whole or in part without notifying the Company.

**13. BANKRUPTCY**

Either party may terminate this Agreement forthwith if the other party becomes insolvent or otherwise commits any act of bankruptcy.

**14. FORCE MAJEURE**

Neither party to this Agreement shall be liable to the other for any failure to perform, or delay in the performance of, any obligation under this Agreement caused by circumstances beyond its reasonable control, including but not limited to: acts of God, fire, labour difficulties or governmental action. It is agreed that the time for performance by either party shall be extended by the period of such uncontrollable circumstances. In no event, however, shall the Company’s performance be delayed for more than [NUMBER] month from the date of such circumstances arising. After this period, the Service Provider may terminate this Agreement and at its option, procure the services elsewhere.

**15. SURVIVAL OF CLAUSES**

Notwithstanding the termination of this Agreement for any reason whatsoever including normal expiration, clauses about Non-Disclosure (Section 7) and Title to Work (Section 8) shall survive the expiration or other termination of this Agreement, in addition to any other clause which survives by operation of [YOUR COUNTRY LAW].

**16. TIME OF THE ESSENCE**

Time is of the essence in any matter relating to the performance of this Agreement.

**17. GOVERNING LAW**

This Agreement shall be governed and interpreted in accordance with the [YOUR COUNTRY LAW] in force in the province of [PROVINCE].

**18. NOTICES**

All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, telegram, telex, telecopier, facsimile transmission, or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, [NUMBER] days after deposit in the mail, or upon acknowledgement of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the beginning of this Agreement or such other address as either party may specify in writing. If notice is sent to, it shall be sent to the person bearing the title set forth below the Company’s signature to this Agreement. If notice is sent to the Service Provider, it shall be sent to the person bearing the title set forth below the Service Provider’s signature to this Agreement.

**19. SEVERABILITY AND WAIVER**

In the event that any one or more of the provisions contained in this Agreement shall be held to be unenforceable under the [YOUR COUNTRY LAW] in force in the Province of [PROVINCE], such provision(s) shall be deemed not to have been written and shall not affect any other provisions of this Agreement.

The failure of either party to insist upon strict performance of this Agreement, or to exercise any option herein, shall not act as a waiver of any right, promise or option, but the same shall continue to be in full force and effect. No waiver by the Service Provider of any breach shall be effective unless expressed in writing.

**20. ENTIRE AGREEMENT**

This Agreement, including the attached Schedules and the documents incorporated by reference, shall constitute the entire Agreement between the parties with respect to the subject matter hereof, and shall replace all prior written or verbal promises and representations.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# COMPANY SERVICE PROVIDER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title