SOFTWARE MAINTENANCE AGREEMENT

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

**BETWEEN: [FIRST PARTY NAME]** (the "First Party"), a company organised and existing under the laws of [Country], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "Second Party"), a company organised and existing under the laws of [Country], with its head office located at:

 [COMPLETE ADDRESS]

WHEREAS under the Master Agreement, the First Party and the Licensee have entered into licence no [NUMBER] (hereinafter referred to as the “License Agreement”) with respect to such Software Products referred to in such licence Agreement (hereinafter referred to as the “Software”);

WHEREAS Second Party wishes to sell to First Party and Licensee wishes to purchase from Second Party maintenance and support services for the Software under this Agreement;

NOW, THEREFORE, consideration of the mutual promises herein, the First Party and the Second Party agree as follows:

1. **SCOPE OF AGREEMENT**

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

* 1. **Software Update, Upgrades and Correction Services**

As part of the Software Update and Correction Service, the Second Party shall promptly provide to the First Party:

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

Telephone Support Services includes the Licensee having direct telephone access to employees of the Second Party who have the necessary technical expertise and experience to understand and solve the First Party’s inquiries concerning the Software Defects as set out in the licence Agreement and to clarify Documentation when same is either insufficient or unclear. Such direct telephone access shall be available Monday through Friday, exclusive of statutory holidays, from [HOUR] to [HOUR] (Eastern Standard Time). The Second Party shall be obligated to respond 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 a response is not satisfactory to the First Party, acting reasonably, then the Second Party shall promptly provide Software Repair Services.

* 1. **Software Correction Services**

Should the Software not operate as set out in the licence Agreement, the Second Party will promptly correct the Software at no additional charge to the First Party.

1. **TERM**

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

1. **CHARGES AND PAYMENT**

Upon execution of this Agreement, Licensee shall pay the Second Party the sum of [AMOUNT] on a [SPECIFY] basis which represents the total amount that Licensee will pay for the Services provided by the Second Party under Schedule [SPECIFY]. All taxes are excluded and shall be shown separately on the Second Party’s invoice.

1. **WARRANTY**

The Second Party warrants for a period of [NUMBER] days from the date of their being rendered that the Services will remedy the problem to which they are related.

1. **EQUIPMENT/SOFTWARE**

The Second Party shall use the equipment (hardware and software) provided by the First Party solely for the provision of the services covered under this Agreement.

1. **INSURANCE**

The Second Party hereby accepts total responsibility for the equipment provided by the First Party under Section 5 above. The Second Party shall provide the First Party with a certificate of insurance indicating coverage for at least [SPECIFY] to cover its liability in the event the equipment is damaged or destroyed. The certificate shall specifically cover the equipment provided by the First Party under Section 5 above and shall name the First Party 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.

1. **NON-DISCLOSURE**

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

1. **TITLE TO WORK**
	1. 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 [SPECIFY].
	2. At [SPECIFY] request, [SPECIFY] shall sign any additional documents necessary (as the case may be) to give full effect to [SPECIFY]s title to the Work. Moreover, upon completion of the Work, [SPECIFY] 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 Copyright Act ([COUNTRY]) they may have in the Work and provide [SPECIFY] with evidence of such waiver at [SPECIFY]’s request.
2. **INDEMNIFICATION**

The provisions governing indemnification of the First Party by the Second Party set out in articles [NUMBER] and [NUMBER] of the licence Agreement shall apply to this Agreement *mutatis mutandis* and, in particular, to the Services.

1. **CHANGES IN THE SERVICES**

The First Party 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 Second Party shall undertake the changes above only upon written authorisation of the First Party.

1. **TERMINATION FOR DEFAULT**

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

Upon termination, the Second Party shall return all equipment provided by the First Party to the Second Party under Section 5 above.

1. **ASSIGNMENT**

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

1. **BANKRUPTCY**

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

1. **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 Second Party’s performance be delayed for more than [NUMBER] month from the date of such circumstances arising. After this period, the First Party may terminate this Agreement and at its option, procure the Services elsewhere.

1. **SURVIVAL OF CLAUSES**

Notwithstanding the termination of this Agreement for any reason whatsoever including normal expiration, clauses pertaining to:

Non-Disclosure (Section 7)

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].

1. **TIME OF ESSENCE**

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

1. **GOVERNING LAW**

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

1. **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 Second Party’s signature to this Agreement.

1. **SEVERABILITY AND WAIVER**
	1. 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.
	2. 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 First Party 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.

# FIRST PARTY SECOND PARTY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title