

SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement (the "Agreement") is effective as of [DATE] (the "Effective Date").

BETWEEN: [SERVICE PROVIDER NAME] (the "Service Provider"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

AND: [CLIENT NAME] (the "Client"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

RECITALS

This Agreement sets forth the terms and conditions under which Service Provider will provide Client with certain maintenance services on specified Service Provider premises (hereinafter referred to as the "Service Provider Network Location(s)" and identified in Exhibit A). The Client and Service Provider will hereinafter be referred to cumulatively as the "Parties" and singularly as the "Party".

WHEREAS, Service Provider has created and implemented for Client certain software [SOFTWARE NAME] (hereinafter referred to as the "Covered Software" and identified in Exhibit B) pursuant to an agreement dated [DATE]; and

WHEREAS, Service Provider has provided to Client certain software [SOFTWARE NAME] (hereinafter referred to as the "Covered Software" and identified in Exhibit B) pursuant to a software license agreement between the parties (the "License Agreement"); and

NOW, THEREFORE, in consideration of the mutual agreements and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. TERM AND TERMINATION

- A. The initial term of this Agreement shall commence on the [DATE], shall continue for a period of [NUMBER] years, and then shall terminate on [DATE].
- B. This Agreement is binding when executed by Client and subsequently accepted by Service Provider and once accepted by Service Provider, the rates and charges provided in this Agreement will be effective from the first day of the next billing cycle following Client's signature date (the "Effective Date").
- C. Either Party may terminate this Agreement following the giving of [NUMBER] calendar days prior written notice of termination to the other Party.
- D. If Client terminates this Agreement prior to the expiration of the initial [NUMBER] year term, Client will pay Service Provider, in addition to all other charges due, per Service Provider Network Location, which amount shall represent liquidated damages that Client agrees are reasonable.

2. FINANCIAL PROVISIONS

[TIME AND MATERIALS AGREEMENT]

Service Provider shall be compensated at the rate of [RATE] per hour [OR "day," "week," "month"] for maintenance services outlined in this agreement. Payment will be made within [NUMBER OF DAYS] days of Developer's submission of an invoice for work completed. [OPTIONAL: "Unless otherwise agreed upon in writing by Customer, Customer's maximum liability for all services performed during the term of this Agreement shall not exceed [MAXIMUM AMOUNT]."]

OR

[FIXED PRICE AGREEMENT]

The total contract price shall be set forth in the Maintenance Plan. Customer shall pay the Developer the sum of [INITIAL AMOUNT] upon execution of this Agreement and the sum of [AMOUNT IF PLAN APPROVED] upon Customer's approval of the Maintenance Plan. The remainder of the contract price shall be payable in installments according to the payment schedule to be included in the Maintenance Plan.

3. DESCRIPTION OF MAINTENANCE SERVICES

A. Support Services

During the term of this Agreement, Service Provider will provide the services described herein so as to maintain the Covered Software in good working order, keeping it free from material defects so that the Covered Software shall function properly and in accordance with the accepted level of performance as set forth in the License Agreement.

(1) Service Response. Service Provider will make available to Client a telephone number [NUMBER] for Client to call requesting service of the Covered Software. The Support Center HOTLINE operates during business hours, [BUSINESS HOURS], Monday through Friday, excluding legal holidays. Extended coverage is available for an additional fee. The HOTLINE can also be used to notify Service Provider of problems associated with the Covered Software and related documentation.

B. Remedial Support

Upon receipt by Service Provider of notice from Client through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Covered Software, Service Provider shall respond as provided below:

Severity 1: Produces an emergency situation in which the Covered Software is inoperable, produces incorrect results, or fails catastrophically.

RESPONSE: Service Provider will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within one [X] hour(s). Service Provider will continue to provide best efforts to resolve Severity 1 problems in less than forty-eight (48) hours. The resolution will be delivered to Client as a work-around or as an emergency software fix. If Service Provider delivers an acceptable work-around, the severity classification will drop to a Severity 2.

Severity 2: Produces a detrimental situation in which performance (throughput or response) of the Covered Software degrades substantially under reasonable loads, such that there is a severe impact on use; the Covered Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

RESPONSE: Service Provider will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonable possible, but in any event a response via telephone will be provided within four (4) hours. Service Provider will exercise best efforts to resolve Severity 2 problems within five (5) days. The resolution will be delivered to Client in the same format as Severity 1 problems. If Service Provider delivers an acceptable work-around for a Severity 2 problem, the severity classification will drop to a Severity 3.

Severity 3: Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.

RESPONSE: Service Provider will exercise best efforts to resolve Severity 3 problems in the next maintenance release.

Severity 4: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from Service Provider.

RESPONSE: Service Provider will provide, as agreed by the parties, a fix or fixes for Severity 4 problems in future maintenance releases.

C. Maintenance Services

During the term of this Agreement, Service Provider will maintain the Covered Software by providing software updates and enhancements to Client as the same are offered by Service Provider to its licensees of the Covered Software under maintenance generally ("Updates"). All software updates and enhancements provided to Client by Service Provider pursuant to the terms of this Agreement shall be subject to the terms and conditions of the License Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:

(1) Bug fixes;

(2) Enhancements to market data service software provided by Service Provider to keep current with changes in market data services or as Service Provider makes enhancements;

(3) Enhancements to keep current with the current hardware vendor's OS releases, as available from Service Provider, provided that the current hardware vendor's OS release is both binary and source-compatible with the OS release currently supported by Service Provider; and

(4) Performance enhancements to Covered Software.

(5) Updates do not include:

(a) Platform extensions including product extensions to (i) different hardware platforms; (ii) different windowing system platforms; (iii) different operating system platforms; and

(b) New functions such as (i) new functionality in the market data delivery infrastructure; (ii) new market data feeds; (iii) new applications; and (iv) new presentation tools.

Updates will be provided in machine-readable format and updates to related documentation will be provided in hard copy form. All such deliveries shall be made by a single communication to a single Client designated distribution point specified in Exhibit A. Duplication, distribution and installation of Updates is the responsibility of Client. If requested, Service Provider will provide on-site assistance in the installation of Updates on a time and materials basis, plus expenses.

Service Provider will provide support services for previous releases for a minimum period of six (6) months following the general availability of a new release or software update. After this time, Service Provider shall have no further responsibility for supporting and maintaining the prior releases.

Service Provider assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Covered Software if the Client has made changes to the system hardware/software configuration or modifications to any supplied source code which changes effect the performance of the Covered Software and were made without prior notification and written approval by Service Provider. Service Provider assumes no responsibility for the operation or performance of any Client-written or third-party application.

D. Services Not Included

Maintenance Services do not include any of the following: (1) custom programming services; (2) on-site support, including installation of hardware or software; (3) support of any software that is not Covered Software; (4) training; (5) out-of-pocket and reasonable expenses, including hardware and related supplies.

4. CANCELLATION FOR CAUSE

- A. In addition to any other rights of termination specified herein, either Party may terminate this Agreement upon [NUMBER] days prior written notice to the other in the event of:
- i. the other's failure to pay any amounts due hereunder and not duly contested in good faith within [NUMBER] days after the receipt of the terminating Party's written notice of default concerning the same; or
 - ii. the other's failure to cure a material breach within [NUMBER] days after receipt of the terminating Party's written notice of default concerning the same.

5. NON-COMPETITION

A. By Client

The Client covenants and agrees that it will not directly or indirectly for the term of this Agreement and for a period of two years following the termination of this Agreement:

- (i) engage in, continue in or carry on any business which competes with Service Provider in Service Provider's Business (hereunder described) or which is substantially similar thereto.
- (ii) offer employment to a person who is or was employed by Service Provider during the then immediately preceding [NUMBER] months, or assist any other person or entity in offering employment to a person who is or was employed by Service Provider, during the then immediately preceding [NUMBER] months, without the prior written consent of Service Provider;
- (iii) undertake any business with or solicit the business of any person, firm or company who shall have been a customer of Service Provider and with whom any executive of Service Provider or their subordinates has dealt with during the then immediately preceding [NUMBER] months which might adversely affect Service Provider's business relationship with such customer, but only if such solicited business relates to Service Provider's Business;
- (iv) engage in any practice the purpose of which is to evade the provisions of this covenant not to compete.

B. By Service Provider

Service Provider covenants and agrees that it will not directly or indirectly for the term of this agreement and for a period of two years following the termination of this Agreement:

- (i) engage in, continue in or carry on any business which competes with the Client in the Client's Business or which is substantially similar thereto;
- (ii) consult with, advise or assist in any way, whether or not for consideration, any corporation, partnership, firm or other business organization which is now or becomes a Competitor of the Client if the principal purpose of such consultation, advice or assistance is to permit such corporation, partnership, firm or business organization to compete with Client in the Client's Business, including, but not limited to, advertising or otherwise endorsing the products of any Competitor of the Client for such purpose; soliciting customers or otherwise serving as an intermediary for any such Competitor of the Client for such purpose; loaning money or rendering any other form of financial assistance to or engaging in any form of business transaction with any Competitor of the Client for such purpose;
- (iii) offer employment to a person who is or was employed by the Client during the then immediately preceding [NUMBER] months, or assist any other person or entity in offering employment to a person who is or was employed by the Client, during the then immediately preceding [NUMBER] months, without the prior written consent of the Client;
- (iv) undertake any business with or solicit the business of any person, firm or company who shall have been a customer of the Client and with whom any executive of the Client or their subordinates has dealt with during the then immediately preceding [NUMBER] months which might adversely affect the Client's business relationship with such customer, but only if such solicited business relates to the Client's Business; or
- (v) engage in any practice the purpose of which is to evade the provisions of this covenant not to compete.

6. INDEPENDENT CONTRACTOR RELATIONSHIP

It is acknowledged and agreed that Service Provider's relationship with the Client is at all times hereunder an independent contractor. The Client shall have no authority over Service Provider's internal business affairs and decisions. Service Provider shall have no authority to act on behalf of, or legally bind the Client, and Service Provider shall not hold itself out as having any such authority. This Agreement shall not be construed as creating a partnership or joint venture.

7. GENERAL

- A. This Agreement sets forth the entire understanding between the Parties with regard to the subject matter hereof and supersedes any prior discussions or representations between them with respect thereto. All amendments to this Agreement shall be in writing and signed by both Parties.
- B. Neither Party may use the name, trademark, service mark or Logo of the other Party in any advertising, news releases or in any other manner without the written consent of such Party.
- C. Client may not assign this Agreement or any of its rights hereunder without written consent by Service Provider, which shall not be unreasonably withheld.
- D. All Equipment provided for Service Provider by Client hereunder for use in connection with Service Provider's communications services shall be deemed to be "Client-Provided Terminal Equipment" within the meaning of Service Provider's Tariff.

- E. The relevant rights and obligations of the parties shall survive the termination of this Agreement.
- F. All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally or by telex, telegram, Service Provider Mail, or certified, registered, or express mail at the respective addresses set forth below (or at such other addresses as shall be given in writing by either Party to the other). All notices, requests, demands or communications shall be deemed effective upon personal delivery or on the calendar day following the date of the telex, telegram, or Service Provider Mail, or when received if sent by registered certified or express mail.

If to Service Provider:

[SERVICE PROVIDER]
[ATT TO:]
[FULL ADDRESS]

If to Client:

[CLIENT]
[ATT TO:]
[FULL ADDRESS]

8. GOVERNING LAW

This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by [STATE/PROVINCE, COUNTRY] law, excluding any laws that direct the application of another jurisdiction's laws.

9. ATTORNEY FEES PROVISION

In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

IN WITNESS WHEREOF, the parties have executed this Agreement at [DESIGNATE PLACE OF EXECUTION], with full knowledge of its content and significance and intending to be legally bound by the terms hereof the day and year first above written.

SERVICE PROVIDER

CLIENT

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

EXHIBIT A
SERVICE PROVIDER NETWORK LOCATION(S)

EXHIBIT B
COVERED SOFTWARE