

# SOFTWARE MAINTENANCE AGREEMENT TEMPLATE



The Software Maintenance Agreement is a legal document that sets forth terms and conditions under which a Service Provider shall provide clients with certain software maintenance. Generally this type of agreement is complementary to other contracts entered into made by software companies with their clients, such as the Software License Agreement or the Software Development Agreement. Once defined the maintenance services provided, the **Software Maintenance Agreement** contains clauses such as payments, term and termination, cancellation, equipment, resolution of disagreement, applicable law and competent jurisdiction.

## SOFTWARE MAINTENANCE AGREEMENT

**DATE:** .....

**BETWEEN:**

..... [*company legal name*] whose registered office is at .....  
[*address, city and country*] and registration/fiscal number is ..... (hereinafter referred to as the "Service Provider"),

**AND:**

..... [*company legal name*] whose registered office is at .....  
[*address, city and country*] and registration/fiscal number is ..... (hereinafter referred to as the "Client"),

Both parties express a mutual recognition of their legal authority to enter into this Software Development Agreement and declare that:

### RECITALS

This Agreement sets forth the terms and conditions under which Service Provider will provide Client with certain Software Maintenance. 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 .....[*insert software name*] (hereinafter referred to as the "Covered Software" and identified in Annex A pursuant to an agreement dated .....[*insert date*]; and

WHEREAS, Service Provider has provided to Client certain software .....[insert software name] (hereinafter referred to as the "Covered Software" and identified in Annex A) 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:

## CLAUSES

### 1. TERM AND TERMINATION

- 1.1 The initial term of this Agreement shall commence on the .....[insert date], shall continue for a period of ..... [insert number] years, and then shall terminate on .....[insert date].
- 1.2 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").
- 1.3 Either Party may terminate this Agreement following the giving of .....[insert number] calendar days prior written notice of termination to the other Party.
- 1.4 If Client terminates this Agreement prior to the expiration of the initial .....[insert 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. DESCRIPTION OF MAINTENANCE SERVICES

#### 2.1 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 .....[insert number] for Client to call requesting service of the Covered Software. The Support Center operates during business hours, .....[insert business hours], Monday through Friday, excluding legal holidays. Extended coverage is available for an additional fee. The Support Center can also be used to notify Service Provider of problems associated with the Covered Software and related documentation.

## 2.2 Remedial Support

Upon receipt by Service Provider of notice from Client through the Support Center 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 .....[insert number] 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 ..... [insert number] hours. Service Provider will exercise best efforts to resolve Severity 2 problems within five ..... [insert number] 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.

## 2.3 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.

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**This is a sample of the Software Maintenance Agreement.**

To get more information about this contract click here:



**[SOFTWARE MAINTENANCE AGREEMENT](#)**

# USER GUIDE

Contracts drafted by the legal experts of Global Negotiator cover all relevant aspects that are negotiated and agreed in the different types of business between companies. However, when these contracts are used you should take into account some recommendations common to all of them that are described in this User Guide.

## DATE

The date when the contract comes into force is the one that appears in its header, as mentioned in the final paragraphs of the contract, before signatures (This Contract comes into force on the date written above).

In some contracts -for example in the Supply Contract- the date of coming into force is also mentioned in one of the clauses. In these cases, you have to verify that the two dates inserted in the contract (in the heading and in the corresponding clause) are the same, in order to avoid discrepancies.

## PARTIES

Be sure to insert in the first page of the contract the full details of the Parties:

- When a Party is a company you must insert the following information: legal name, legal form (limited, incorporated, etc.), full address, registration data and fiscal identification number.
- When a Party is an individual that works as independent professional (for example a commercial agent) you must insert the following information: full name, profession, full address and fiscal identification number.

## CLAUSES

### **Clauses with different alternatives: choose the most favorable**

In the most important clauses of each contract (exclusivity, payment terms, applicable law and competent jurisdiction, etc.) several drafting alternatives are proposed so you can choose the most appropriate to each situation. Therefore, the user before submitting the contract to the other Party must choose the alternatives that seem best suited to their interests and eliminate the rest.

### **Clauses with blank spaces to be completed**

In several clauses of the contract blank spaces appear with dots (.....) that the user has to complete inserting text. Following the dots, between brackets, you will see the data and explanations to insert the text.

- When the text between brackets is in normal letters (the same as the contract) and separated by "," or the word "o", the user must insert one of the options suggested.

Example of blank space (.....) with options to select between brackets:

Orders handled before completion of the present Contract which produce sales transactions within ..... [1, 2, 3, 6] months shall entitle the Agent to receive the corresponding commission. In this case, the user must choose between options 1, 2, 3 or 6 months and insert one in the blank space (.....).

- When the text between brackets is in italics the user has to insert the data and information requested and eliminate the bracketed text.

Example of blank space - (.....) to insert text:

Both parties, by mutual consent, resolve to refer any dispute to the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The place of arbitration shall be ..... [*city and country*]. In this case, the user must insert in the blank space (.....) the city and country chosen to conduct the arbitration and afterward eliminate the bracketed text [*city and country*].

### **Notices Clause**

Sometimes it may happen that the official address of the Parties which appear at the beginning of the contract is different from which is to be used for communications between the Parties during the terms of the contract. In this case, the user should include at the end of the contract a Notices Clause.

Example of Notices Clause:

Notices. - In order to comply with their contractual obligations, the Parties establish the following address for the provision of notices related to this contract:

- Party 1 ..... [*insert full address*].
- Party 2 ..... [*insert full address*].

### **ANNEXES**

The contracts incorporate some Annexes, each of them, referenced to the corresponding Clause. Annexes are drafted in commonly used formats, although the user must adapt these formats and the text inserted in them to each particular situation.

### **SIGNATURES**

#### **People who sign**

Persons signing the contract on behalf of the company must have the authority to do so and preferably, be entitled on the basis of a power of attorney. Below the signature, in addition to the full name of the person that signs his/her position must be inserted. When one of the Parties who signs is a natural person (for example a commercial agent in an Agency Contract) obviously he or she is the person that has to sign the contract.

The laws of some countries require that contracts, to be valid, shall be signed in front of witnesses or a public notary. Therefore, before signing a contract you should be informed about the requirements that may exist in each country.

### **Place and date of signature**

Usually, contracts are signed by both Parties on the same date and place. Nevertheless, in international contracts, due to physical distance, it is common that each of the Parties sign in different dates and places. This contract provides for both alternatives so it comes to choosing the most appropriate to each situation.

### **Number of copies**

Usually, the Parties sign two copies of the contract, each Party retaining one of them, but can also arise the need to sign more copies. In this case, all you have to do is mention explicitly the number of copies to be signed in the paragraph that is included at the end of the contract (Both Parties declare their conformity to the present contract, which is signed in ..... copies, each of which shall be considered an original).

## **GENERAL RECOMMENDATIONS**

The Parties must sign all pages of the contract, including Annexes, so they are also valid. It is better to use ball point or pen (not pencil) in a color other than black (e.g.: blue); this makes it easier to distinguish an original document from a photocopy.

It is preferable (although no mandatory) to express sums of money and percentages in words and figures. Of course, the words and figures for a given amount must match exactly. You also must insert the currency in which the amounts are expressed. It is advisable to use the rules establish by ISO that name each currency by three capital letters (EUR for euro, USD for dollar, GBP for sterling pound, JPY for Japanese yen, etc. - you can get the acronyms of every currency in the website [www.oanda.com](http://www.oanda.com)).

Once you have chosen the best alternatives of each clause and have completed the blank spaces you should revise the whole contract to remove remaining paragraphs and correct any errors.



# BUSINESS CONTRACTS & AGREEMENTS TEMPLATES

## BUSINESS CONTRACTS

- Strategic Alliance Agreement
- Joint Venture Agreement
- Manufacturing Contract
- Supply Contract
- Service Provider Contract
- Consulting Services Contract

## COMMERCIAL CONTRACTS

- Exclusive Distribution Contract
- Commercial Agency Contract
- Sales Representative Agreement
- Sales Commission Contract
- Real State Agent Agreement

## LICENSE & FRANCHISE CONTRACTS

- Trademark License Agreement
- Technology Transfer Agreement
- Software License Agreement
- Franchise Contract
- Master Franchise Contract

## CONFIDENTIALITY CONTRACTS

- Confidentiality Contract between Companies
- Confidentiality Contract for Product or Business Idea
- Confidentiality Contract for Employees
- Confidentiality Contract for Consultants and Contractors

## SHAREHOLDERS & INVESTORS AGREEMENTS

- Shareholders Agreement for a New Company
- Investors Agreement
- Business Plan for Investors
- Business Proposal for Investors

## BUSINESS SALE AND PURCHASE AGREEMENTS

- Business Sale and Purchase Agreement
- Share Sale and Purchase Agreement
- Broker Agreement for the Sale of a Business
- Broker Agreement for the Sale of Shares
- Confidentiality Agreement for Selling a Business
- Disclosure Letter for Selling a Business
- Letter of Intent to Purchase a Business
- Due Diligence Report
- Due Diligence Checklist
- Legal Due Diligence

### Online Purchase

[www.globalnegotiator.com](http://www.globalnegotiator.com)

[info@globalnegotiator.com](mailto:info@globalnegotiator.com)



<https://www.globalnegotiator.com/en/business-contracts>