

Software Maintenance Agreement

- ☞ This [Software] Maintenance Agreement provides for the ongoing maintenance of the [Software] you hired a programmer to develop for you or your company – after expiration of the warranty specified in the Sales Agreement.
- ☞ This is initially written presuming that you are hiring the software programmer to provide the software development/maintenance for your company; however, if you are the programmer, you can easily edit to reverse the polarity.
- ☞ “[Software]” looks like this because you may want to call it something else.
- ☞ The first part of the Memorandum should be completed and distributed to the other party along with a copy of the [Software] Maintenance Agreement.

This may be a maintenance contract for [Software], but if you can maintain [Software] you can maintain just about anything.



Date: **[Date]**

To: **[Name of Contractor]**

From: **[Owner/Founder]**
[Company]

Subject: **[Software] Maintenance Agreement**

Attached is a “[Software] Maintenance” Agreement in order to provide for the maintenance of the [Software] after expiration of the warranty specified in the Sales Agreement.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!


From JIAN

NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🔊 **Do Not Use This Agreement 'As-Is.'**
- 🔊 **This Agreement Is Not Legal Advice.**
- 🔊 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🔊 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🔊 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

Free Access to Attorneys, Accountants & Consultants in Your Area

We're building a network of  business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.


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Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under [Updates](#).
- Remember to bookmark our website: www.JIAN.com

Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[]” which may contain an unedited variable.


- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

[Software] Maintenance Agreement

- ☞ This is a standard introductory paragraph that lists the parties to the Agreement and the date the Agreement is being entered into. You need to enter the date of the Agreement, the names of the parties, the specific type of organization, and their addresses.

This [Software] Maintenance Agreement (“Agreement”) is entered into as of

Effective Date: [Date]

between [Name of Developer], (“Developer”)
a [State] [Corporation/Partnership/Sole Proprietorship/Resident],
located at  Address]

and [Company Legal Name], (“[Company]”)
a [State] [Corporation/Partnership/Sole Proprietorship/Resident]
located at [Address]
[City], [State] [Zip Code]

Summary

- ☞ Enter the date of the Purchase Agreement and include a copy as Exhibit A.

Developer and [Company] entered into a Development / Purchase Agreement dated [Month, Day, Year] (attached to this Agreement as Exhibit A), pursuant to which Developer sold the computer program described in that Purchase Agreement (the “[Software]”) to [Company].

[Company] and Developer desire to enter into an Agreement providing for the maintenance of the [Software].

- ☞ Developer determines what maintenance services will be needed to remedy the problem.

1. Maintenance Services.

Developer will remedy any programming error attributable to Developer that exists in the [Software], either by replacing the [Software] or by taking suitable corrective action. Promptly after [Company] identifies and thereafter notifies Developer of a programming error, Developer, in its discretion, shall take corrective action, either replacing the [Software] or providing other services.

2. Modifications Excluded

- ☞ Any maintenance required as a result of changes made by [Company] is not included in this Agreement.

- ☞ However, you could easily provide for additional development here. Probably best to use the “Software Development Work for Hire” Agreement for specifying additional development work.

This Agreement does not obligate Developer to provide maintenance services required as a result of

modifications made to the [Software] by [Company] or to any computer program incorporating all or any part of the [Software].

3. Access to Data & Computer

☞ [Company] agrees to assist Developer by providing necessary information regarding any problems with the [Software].

If necessary, [Company] will provide Developer with evidence of programming error(s). In addition, [Company] will provide Developer with access to its computer and adequate computer time to enable Developer to reproduce the problem, determine whether it results from the [Software], and, after corrective action or replacement has taken place, ascertain whether the problem has been corrected.

☞ For the first two inserts in Section 4, enter the starting date of the Agreement. Since a Warranty may be in effect when it is executed, the date of this Agreement may not be the operative date. For the third insert, enter the period of duration of the Agreement, for example, one year. For the fourth insert, decide whether the Agreement will be automatically extended unless the final bracketed period of notice is given or terminates at the end of the initial term, period.

4. Term & Termination of Agreement

4.1 This Agreement shall be erative from the Effective Date for a [One Year] period after that it [is automatically extended for a like period / may be terminated by either party upon [xx] days prior written notice to the other).

4.2 If [Company] defaults on the Purchase Agreement and it is subsequently terminated, this Agreement shall also be terminated.

☞ Enter the number of days after which failure to receive the maintenance fee is grounds for termination.

4.3 Developer may terminate this Agreement in the event of any failure on the part of [Company] to pay the maintenance fee within [xx] days after written notice to [Company].

☞ Once terminated, [Company] must pay Developer all money due.

4.4 In the event of termination, all fees or charges payable under this Agreement shall become due and payable immediately and without notice or demand by Developer and all obligations of Developer under this Agreement shall immediately end.

5. Warranty

Any replaced or corrected [Software] is subject to all of the warranties provisions set forth in the Purchase Agreement, including limitations and disclaimers.

6. Fees & Charges

☞ For the first insert in Section 6, enter the fee to be charged [Company] for each of the second bracketed periods.

The fee for the maintenance services provided for in this Agreement shall be **[\$000]** per **[hour/day/month]**, payable in advance of each period.

7. Customer-Modified [Software]

☞ If Developer fixes a problem caused by [Company], [Company] has to pay.

If Developer corrects defects or problems resulting from [Company]'s modifications, [Company] agrees to pay Developer for his/her time and materials at **[\$000]** per hour.

8. Travel Expenses

If Developer incurs any travel or incidental expenses, including meals, telephone charges, and shipping costs, in connection with Developer's performance of its duties under this Agreement, [Company] agrees to reimburse Developer for those expenses.

9. Confidentiality

☞ This is a standard non-disclosure provision by means of which both parties agree that any confidential information disclosed to the other is the property of the disclosing party and such information, in addition to the terms of this Agreement, may not be disclosed to third parties. The exception to this is when the disclosing party can prove that it already had the information, or the information becomes available to the general public. This non-disclosure requirement continues to be effective even upon or after termination of this Agreement.

9.1 Proprietary Information. Each party acknowledges that it may be furnished with or may otherwise receive or have access to information or material which relates to past, present or future products, [Software], research development, inventions, processes, techniques, designs or technical information and data, marketing plans, and so on. (The "Proprietary Information"). Each party agrees to preserve and protect the confidentiality of the Proprietary Information and all of its physical forms, whether disclosed to the other party before this Agreement is signed or afterward. In addition, a party shall not disclose or disseminate the Proprietary Information for its own benefit or for the benefit of any third party. The previously stated obligations do not apply to any information that

- (1) is publicly known;
- (2) is given to a party by someone else who is not obligated to maintain confidentiality; or
- (3) a party had already developed prior to the day this Agreement is signed, as evidenced by documents.

Neither party shall take or cause to be taken any physical forms of Proprietary Information (nor make copies of same) without the other party's written permission. Within three (3) days after the termination of this Agreement (or any other time at the other party's request), a party shall return to the other party all copies of Proprietary Information in tangible form. Despite any other provisions of this Agreement, the requirements of this Section shall survive termination of this Agreement.

10. General Provisions

☞ The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by defining certain common issues such as notice, assignment, legal remedies, waiver, and attorney fees, etc..

10.1 Independent Contractors. The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

☞ You may or may not want to make this deal public – at least limit that event by this agreement and work out if/how/when you want to do that later.

10.2 Publicity. Neither party will make any public announcement or issue any press release concerning the terms of this Agreement without the prior approval of both parties. If the parties mutually agree to

issue a press release concerning the issues described in this Agreement, the parties shall cooperate to mutually agree on a press release describing the relationship based on this Agreement, and to issue such press release in the normal course of business.

☞ Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

10.3 Non-Solicitation. Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for the first year.

☞ You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

10.4 Governing Law & Jurisdiction. This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

☞ This Agreement is intended to be the only Agreement, and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to be included in this Agreement. Otherwise, it is as if it was not agreed to.

10.5 Entire Agreement. This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

☞ Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

10.6 All Amendments in Writing. No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

☞ All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

10.7 Notices. Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

☞ In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

10.8 Costs of Legal Action. In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

- ☞ Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

10.9 Inadequate Legal Remedy. Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

- ☞ Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

10.10 Arbitration. Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

- ☞ Merely delaying to bring action that one party has a right to bring does not cause that party to lose or waive his right to sue that action.

10.11 Delay is Not a Waiver. No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

- ☞ Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

10.12 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

- ☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.
- ☞ You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.
- ☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3rd party.
- ☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...

☞ CHOOSE one or the other of these two following paragraphs.

10.13 Assignability & Binding Effect. Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

10.14 Non-Assignability & Binding Effect. Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

10.15 Severability. If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

10.16 Cumulative Rights. Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

10.17 Headings. The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

☞ Every copy shall be just as valid as the original.

10.18 Counterparts. This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

☞ Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

10.19 Survival of Certain Provisions. The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]

Developer

[Owner/Founder]

[Developer]

Title

Title



Exhibit A

Purchase Agreement

