

Open Source SIP Support Contract

THIS AGREEMENT ("Agreement") is hereby entered into between _____, a corporation with offices at _____ ("Subscriber") and Soley LLC, with offices at 121 Varick Street, Suite 201, New York, NY 10013 ("Soley"), on the following terms and conditions:

PART A. DEFINITIONS.

'24x7 Monitoring' means twenty-four by seven service to be provided by the Soley Service Control Center to remotely manage an instance of the Covered Software running on your network. This support package includes 24x7 remote monitoring by Soley's service delivery center staff (in case of problems, they will notify individuals that you specify), advice on basic configuration issues, deployment of upgrades/patches, and other normal maintenance activities. This support package does not include installation or interoperability testing with other vendors.

'Annual Support Subscription' offers support for the Covered Software for a period of one year. The support option covers an unlimited number of instances of the Covered Software; there is no additional cost per instance. All support will be initiated by email through the Soley ticketing system. Soley support staff will schedule time to assist you by instant messenger and, when necessary, will login to your server[s] to help rectify problems. The Annual Support Subscription includes remote installation onto your server[s], multi-vendor interoperability testing, assistance with configuration issues, and advice on overcoming complicated call scenarios.

'Consulting Service' means software customization that will modify the functionality of the the Covered Software based on the written specification attached to this Agreement.

'Covered Software' refers to the Soley Open Source SIP software application specified in Exhibit A. Any third party software, including operating systems, network software and software applications, is not Covered Software or eligible for Software Maintenance Service.

'Development Support' extends the basic support subscription to include access to the developers of the Covered Software for the purpose of answering your development-related questions. The other support subscriptions covered by this Agreement do not cover questions related to modifying or integrating your application with the Covered Software.

'Fee' means the fee referenced in Exhibit A payable by the Subscriber to the SOLEGY for the Software Maintenance Services for the Covered Software

during the Term.

'Installation Service' means support during the installation phase of the Covered Software onto a server or servers as specified by you and, with respect to such installation, shall include all of the services included under 'Annual Support Subscription' for a period of 15 days from the Service Commencement Date.

'Service Commencement Date' means the date for commencement of the Covered Software Support Services specified in Exhibit A.

'Software Maintenance Service' means the specific service option chosen by Subscriber as specified in Exhibit A.

PART B. SERVICE TERMS

1. **Software Maintenance Services.** SOLEGY will provide Software Maintenance Services to Subscriber during the Term subject to the following terms and conditions. Except as specifically noted, Software Maintenance Services will be provided remotely from SOLEGY's locations to the Subscriber, in the English language.

(a) **Software Upgrade Service.** When applicable, Subscriber will receive Software Upgrades as they are made generally available during the Term. Subscriber agrees to install Software Upgrades according to SOLEGY Release Notes within a reasonable time, but no later than the support expiration date for the prior Upgrade.

(b) **Basic Maintenance Service.** Except for 24x7 monitoring, Software Maintenance Service is available during Normal Hours of Operation (currently 9:00 a.m. to 5:00 p.m., SOLEGY local time). At its discretion, SOLEGY may provide extended hours to respond to Code Red service requests.

1. **Submitting Service Requests.** Subscriber's designated contact person will submit service tickets according to SOLEGY instructions. The service request should assign a Severity Level and adequately describe and document the reported error so it can be reproduced. SOLEGY may recharacterize the Severity Level and charge for Consulting Service if the Severity Level appears materially inaccurate.
2. **Subscriber Contacts.** There is no limit on the number of support tickets that can be made, but only two customer contacts (primary and secondary) are able to create support tickets. Tickets will be responded to within 24 hours from the time of submission (excluding holidays and weekends).
3. **Severity Level.** The Severity Level means a perceived error in the

Covered Software is reportedly having the following impact on Subscriber's business:

'Code Red' means the reported error is having a material impact on critical business operations at the enterprise level that cannot be worked around and which needs to be corrected as soon as reasonably possible (e.g., transaction processing application for e-commerce system has crashed and cannot be rebooted).

'Code Orange' means the reported error is having a material impact on important business operations that can be worked around or deferred for only a limited period of time (e.g., delay in daily reports is causing work stoppages).

'Code Yellow' means the reported error is degrading business operations in a way that delays or interferes with some non-critical business operations and can be worked around for a reasonable time (e.g., slow down in generation of reports that need to be produced in the next few days).

'Code Green' means the reported error is having a minor impact on business operations that can be worked around and a fix should be included in the next Software Update (e.g., cosmetic changes to screen layouts, requests for feature enhancements or updates to Documentation).

| <u>Severity Level</u> | <u>Estimated Response Time</u> |
|------------------------------|---------------------------------------|
| Code Red: | Within one (3) hours |
| Code Orange | Within eight (8) hours |
| Code Yellow | Next Working Day |
| Code Green | Reasonable Time |

4. **Response to Service Request.** Response time begins when Subscriber creates a service request ticket in proper form from the Subscriber's authorized contact. Service requests received after Normal Hours are logged at the beginning of the next business day (except Code Red cases may be logged sooner if SOLEGY personnel are available). Response time ends with SOLEGY's notice that it has commenced diagnosis and error correction efforts.

2. Prices & Payment.

(a) **Maintenance Fee.** Subscriber will pay SOLEGY the Fees defined in Exhibit A .

(b) **Invoicing & Payment.** SOLEGY will invoice Subscriber for the Fee. Invoices shall be paid within three (3) days of receipt. If Subscriber disputes an invoice, it shall pay any undisputed portion and may negotiate a solution or invoke the dispute resolution procedures on the disputed balance.

3. Term & Termination. This Agreement shall be effective on the Service Commencement Date and shall continue in full force and effect until its natural termination date, if the nature of the services to be rendered are for a specified duration, or until terminated by either party upon sixty (60) days' prior written notice ("Term") if the nature of the service to be rendered are ongoing. This Agreement may be terminated earlier for either party's default under Section 10 ("Default"). Termination shall have no effect on the parties' rights and obligations under Section 4 ("Proprietary Rights"), Section 5 ("Confidential Information"), Section 6 ("Nonsolicitation"), Section 9 ("Limitations...") or other provisions which by their nature should survive.

4. Proprietary Rights. Unless otherwise indicated, such as in the case of software released under an open source license, the Covered Software and Software Upgrades shall remain the property of the SOLEGY or its designee. Usage rights for Software Upgrades shall be the same as for the Covered Software, or as otherwise specified in a license agreement governing that subject matter. Work product resulting from Consulting Service ("Custom Work Product") shall be work for hire assigned to and owned exclusively by the Subscriber or its designee, or as otherwise agreed in writing by the parties.

5. Confidential Information. Each party may be exposed to confidential and proprietary information of the other party including, without limitation, Covered Software, Software Upgrades, technical, business, financial or other information ("Confidential Information"). Confidential Information does not include information (i) already known or independently developed by recipient; (ii) in the public domain through no wrongful act of recipient, or (iii) received by recipient from a third party who was free to disclose it. Recipient will exercise due diligence not to use or commercialize, or to disclose the other party's Confidential Information to any person or entity, except to its own employees having a "need to know" and other recipients approved by owner in writing. Recipient will not alter or remove from such Confidential Information any confidential or proprietary rights legend.

6. Nonsolicitation. During the Term and for a period of twenty-four (24)

months thereafter, each party agrees not to hire, solicit, nor attempt to solicit, the services of any employee of the other party materially involved in this transaction without the prior written consent of such other party. This provision shall not preclude a party from publishing advertisements of general circulation.

7. Injunctive Relief. The parties acknowledge that violation by one party of the provisions of Section 4 ("Proprietary Rights"), Section 5 ("Confidential Information") or Section 6 ("Nonsolicitation") could cause irreparable harm to the other party not adequately compensable by monetary damages. In addition to other relief, injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

8. Warranties.

(a) No Warranty for Open Source. SOLEGY disclaims all warranties of any kind, whether express or implied, for work performed on Covered Software that is released under an open source license and for derivative works of any kind arising from such Covered Software.

(b) Noninfringement Warranty. Subject to 8(a), SOLEGY represents and warrants that the Software Maintenance Services will not infringe intellectual property rights of any third party, and will defend, indemnify and hold the Subscriber harmless from all costs, damages and liability arising from any claim to the contrary.

(c) Limited Performance Warranty. Subject to 8(a), SOLEGY shall use its best efforts to ensure the Covered Software performs substantially according to its documentation and to perform Software Maintenance Services in a competent, timely and workmanlike manner according to this Agreement. SOLEGY represents and warrants that none of the Software Upgrades or deliverables will contain any timer, counter, lock or similar device (other than security features described in the documentation) that limits operation of the Covered Software.

9. Limitation of Liabilities. EXCEPT FOR VIOLATIONS OF SECTION 4 ("PROPRIETARY RIGHTS") OR SECTION 5 ("CONFIDENTIAL INFORMATION"), NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT IN AN AMOUNT EXCEEDING THE TOTAL CONTRACT PRICE PAYABLE DURING THE CURRENT TERM, OR FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS OR PROFIT), EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH CLAIM AND REGARDLESS OF WHETHER ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION HAS BEEN NEGOTIATED, IS INDEPENDENT OF REMEDIES AND REFLECTS A FAIR ALLOCATION OF RISK.

10. Default. Either party may be declared in default of this Agreement if it breaches any material provision hereof and fails within ten (10) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the other party and proceed with due diligence to completion. Either party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in Bankruptcy is filed with respect to the party and is not dismissed within thirty (30) days.

11. Dispute Resolution

(a) **Disputes; Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES AND NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. The U.N. Convention on Contracts for the International Sale of Goods and the Unfair Contracts Act in the United Kingdom shall not apply to this Agreement.

(b) **Time Limit.** Any claim arising out of or relating to this Agreement shall be initiated in a tribunal of competent jurisdiction within two (2) years after the claim arose, or be barred. Claims for infringement of intellectual property rights, breach of confidentiality or violation of software license restrictions shall arise upon actual discovery by the aggrieved party.

(c) **Tribunal.** Subject to other provisions of this Section 11 ("Dispute Resolution"), either party shall have immediate access to courts of competent jurisdiction to litigate any disputed claim.

12. Independent Contractor Status. Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.

13. Insurance, Indemnity. Each party shall maintain adequate insurance protection covering its respective activities hereunder, including coverage for statutory workers' compensation, comprehensive general liability for bodily injury and property damage, as well as adequate coverage for vehicles. Each party shall indemnify and hold the other harmless from all liability for bodily injury, death, tangible property damage and related costs and expenses (including attorneys' fees) resulting from the acts or omissions of its own officers, agents, employees or representatives.

14. Compliance with Export Regulations. SOLEGY has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other

governmental authorizations or approvals; shall indemnify and hold Subscriber harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be developed or provided herein. SOLEGY shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce.

15. Miscellaneous. This document and Exhibit A constitute the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all other communications, whether written or oral. This Agreement may be modified or amended only by a writing signed by the party against whom enforcement is sought. Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent, which shall not unreasonably be withheld, and any attempt to the contrary shall be void. Neither party shall be liable for delays caused by events beyond its reasonable control, provided it uses due diligence to workaround or resolve the problem. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Subscriber:

Solegy LLC

By:
Date:

By:
Date:

**EXHIBIT A
SOFTWARE MAINTENANCE AGREEMENT**

A. SERVICE COMMENCEMENT DATE: _____

B. DESCRIPTION OF COVERED SOFTWARE: Name and latest version of Covered Software that will be subject to Software Maintenance Services provided under this Agreement. Service Codes: 24x7= Twenty-four by Seven Monitoring Service; AS=Annual Subscription Service; DS=Development Support; IS = Installation Service; CS = Consulting Service.

| <u>Software Name</u> | <u>Latest Version</u> | <u>Service Code</u> |
|----------------------|-----------------------|---------------------|
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C. ADMINISTRATIVE CONTACTS:

Please identify the individual who will serve as Subscriber's initial point of contact for Software Maintenance Services:

Name:

Title:

Email:

Phone:

Fax:

D. APPLICABLE FEES

E: ADDITIONAL TERMS

SOLEGY shall perform the following tasks as part of its obligations under this agreement: