

LICENSING, MAINTENANCE AND SUPPORT AGREEMENT



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Germany

(hereinafter referred to as the **Contractor**)

and

(hereinafter referred to as the **Principal**)

(With the Contractor and Principal referred to collectively as the Parties)

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1. OBJECT OF THIS CONTRACT

- 1.1. This licensing, maintenance and support agreement (hereinafter referred to as the Contract) for the contractual software (hereinafter referred to as the Software or Licensed Program) describes the services of the Contractor in the area of licences, maintenance and support, and sets out the rights and obligations of the Parties in this respect. The contractual services of licensing, maintenance and support shall be deemed to be part of the Contract in accordance with the details in the offer.

2. LICENCES AND SCOPE OF LICENCE

- 2.1. The Contractor grants the Principal a non-transferable and non-exclusive right to the intended and permanent use of the Software designated in the offer from the time of the agreed handover or, in the case of Section 5, from the time of acceptance of the Software, subject to the following conditions. Sublicensing shall not be permitted.
- 2.2. Licensed Programs within the meaning of this Contract are programs and/or data files in machine-readable form, including the associated manual.
- 2.3. The licences shall be concurrent user licences. The number of users logged in at any one time shall be the determining factor. The number of registered users and profiles (write permission, read permission, etc.) can be chosen freely.
- 2.4. The scope of the licence shall be specified in the offer.
- 2.5. The Principal shall further be entitled to make an appropriate number of copies of the Software exclusively for backup purposes. This right also includes the regular production of backup copies for the purpose of quickly restoring data files after a system failure and the temporary use of the Software on an alternative system. Copies of the Software made for backup purposes must be marked accordingly and may not be used for other purposes. The user manual may only be reproduced to the extent that this is necessary for the contractual use of the Software.
- 2.6. The fee for using the licence as well as the payment terms shall be determined by the offer.

3. SERVICES

- 3.1. The Contractor shall owe the Principal the Software designated in the offer from the time of the agreed handover or, in the case of Section 5, from the time of acceptance of the Software.
- 3.2. At the latest when the Software is accepted or starts being used, the Contractor shall provide the Principal with instructions which enable the Principal to use the Software, if applicable after undergoing agreed training.
- 3.3. The Contractor shall provide the following services to the Principal under the Contract:
- Hotline, email and remote desktop support
 - Receipt, initial inspection and rectification of reported program errors
 - Free distribution of releases and updates (excluding installation).
- 3.4. The Contractor can only fulfil this Contract in full if the agreed requirements for remote maintenance are met at the Principal's premises. If this is not the case, this may result in longer response times and additional costs (e.g. travel costs).

4. EXCLUDED SERVICES

The following service is not part of this Contract and shall be provided by the Principal itself or shall only be provided by the Contractor to the extent possible and shall be invoiced additionally according to the general rates as per the offer:

- Adaptations of the Software to a new infrastructure on the part of the Principal as well as the implementation of extensions not included in the original offer.

5. ACCEPTANCE

- 5.1. Insofar as the Contractor owes a work performance requiring acceptance (*Werkleistung* according to sections 631 et seq. German Civil Code, BGB) – by means of individual adaptations of the Software according to the Principal's specifications, by installing the Software on a server of the Principal, by means of data mapping or by means of data migration – the following provisions governing acceptance shall apply.

- 5.2. Acceptance of the work produced by the Contractor shall be deemed confirmation that it conforms to the contract. The acceptance procedure shall commence after the Contractor has notified the Principal that the work is ready for acceptance. After receipt of such notification, the Principal shall test the work and, if it conforms to the contract, accept it in text form.
- 5.3. In order to carry out the test, the Contractor shall make the work available to the Principal and notify it that the work is ready for acceptance. The Principal's use of the work for these testing purposes shall not constitute acceptance. The Principal shall prepare an acceptance protocol in which it records any defects or the fact that the work conforms to the contract, and send it to the Contractor in text form. Any defects shall be remedied by the Contractor within a reasonable period of time; the work shall then be made available for testing again.
- 5.4. Acceptance shall also be deemed to have taken place without formal acceptance if
- 5.4.1. the Principal has begun using the work, or
 - 5.4.2. the Contractor has made the work available for inspection (or re-inspection, if applicable) by the Principal and the Principal does not give notice of any significant defects within two weeks.
- 5.5. The Principal shall be obliged to make partial acceptances, insofar as this was agreed when jointly planning the project or relates to different works that can be used separately by the Principal. The interaction of partially accepted parts with parts to be accepted later shall be checked during a final acceptance. In particular, partial acceptances shall be owed for a data migration, unless expressly agreed otherwise.

6. SPECIFICATION OF MAINTENANCE SERVICES

- 6.1. Software maintenance shall include the correction of errors and the further development of the Software (updates, new releases). Functional extensions (upgrades) may be subject to separate charges.
- 6.2. In the event of disruptions, if requested by the Principal the Contractor shall assist in searching for the cause of the disruption, even if the disruption occurs when several systems or components interact. If the Contractor proves that the disruption was not

caused by the Software maintained by it, these services shall be remunerated separately as agreed in the offer.

- 6.3 Insofar as it is able to do so, the Contractor shall, at the Principal's request and in return for separate remuneration agreed in the offer, also remedy disruptions which are attributable to circumstances for which the Principal or third parties are responsible.
- 6.4 The Principal shall not be obliged to adopt every new Software version (updates, releases, upgrades). In this case, the Contractor shall be entitled to discontinue maintenance services for previous Software versions after a reasonable transition period. Unless otherwise agreed, this period shall normally be 12 months.

7. SPECIFICATION OF SUPPORT SERVICES

- 7.1. If required by the Principal, the Principal shall have access to telephone hotline support, email support and remote desktop support during the Contractor's general operating hours in order to solve problems in the use of the Software via remote maintenance.
- 7.2. The Contractor's general operating hours are Monday to Friday, 9am until 12pm and 1.30pm until 5pm. This excludes public holidays in Germany (at both federal and state level) as well as the Friday after Ascension Day, Christmas Eve (24 December) and New Year's Eve (31 December).

8. RESPONSE AND TROUBLESHOOTING TIME

- 8.1. The Contractor shall receive disruption reports and provide its services (maintenance and support) during its operating hours. The response time shall be measured during operating hours from the receipt of the disruption report to the start of the repair. The troubleshooting time shall be the period from receipt of the disruption report until completion of the repair.
- 8.2. The following disruption categories, response times and troubleshooting times shall apply:

- 8.2.1. Disruption category A: Errors that cause the system to come to a standstill, data to be lost or other functions that are objectively critical for the Principal not to function as agreed.

Examples for CMS tools:

- The system cannot be started as required.
- Data loss or unwanted data changes occur, for example if saving a record causes data loss or data corruption.
- System crash when using the most important basic functionality – e.g. adding a new record.

Response time:

- 4 hours (during operating hours) for beginning the troubleshooting process.
- A period of usually no more than 2 working days to rectify the error.

- 8.2.2. Disruption category B: Errors that lead to objectively important functions for the Principal no longer functioning as agreed and that are time-consuming and resource-intensive to overcome.

Examples for CMS tools:

- The search function is not available.
- It is impossible to add new records.
- Export functionality is not available.
- Slow system response times.
- Or similar.

Response time:

- 1 working day for beginning the troubleshooting process.
- A period of usually no more than 4 working days to rectify the error.

- 8.2.3. Disruption category C: Errors which result in individual functions not working as agreed, but which do not or only insignificantly restrict the use of the Software.

Examples for CMS tools:

- Error when using certain exports/reports.
Does not apply to reports that were created by the Principal and do not work due to a lack of parametrization.

- New values can be entered, but the preview field is not updated.

Response time:

- 4 working days for beginning the troubleshooting process.
- A period of usually no more than 10 working days to rectify the error.

8.2.4. Disruption category D: If there is no serious impediment, in the case of defects slightly affecting processing (e.g. aesthetic defects, content is readable but not output correctly, slight loss of user comfort or similar), the error will be recorded within 5 working days. Functional errors that produce false results of non-critical data shall not constitute a serious impediment. The error will be fixed in the next release as part of maintenance.

9. DUTY OF COOPERATION ON THE PART OF THE PRINCIPAL

- 9.1. The Principal shall be responsible for the provision, installation and operation of the required web and database servers as well as the online storage and backup.
- 9.2. The Principal shall be responsible for the working environment of the maintained Software (hardware, operating system, database and other connected systems) in accordance with the Contractor's specifications. When using the Software, it shall observe the specifications in the user manual.
- 9.3. The Principal shall support the Contractor in the performance of the Contract free of charge to the extent necessary by providing, if required, e.g. staff, work rooms, hardware and software as well as telecommunication facilities and the data, documents and information required by the Contractor completely and in good time. The Principal shall grant the Contractor and its employees access to the systems and issue the necessary authorisations for the required access.
- 9.4. Active Cooperation Obligations: The Customer shall actively and timely cooperate with the Service Provider to the extent required for the proper provision, operation, configuration, further development and support of the Software.
Such cooperation shall include, in particular,
a the timely provision of all information, content, data, access rights and decisions required for the performance of the Services

- b the appointment of competent contact persons with sufficient technical and organizational decision-making authority
- c the timely review, approval or feedback regarding configurations, changes, releases or support requests
- d the prompt notification of any circumstances or changes that may affect the use or operation of the Software

- 9.5 Review and Decision Deadlines: Unless otherwise agreed, the Customer shall provide reviews, approvals or feedback within ten business days following a corresponding request by the Service Provider. If no response is received within this period, the respective Services, configurations or changes shall be deemed approved.
- 9.6 Consequences of Missing or Delayed Cooperation: If the Customer fails to perform required cooperation obligations, or performs them late or incompletely, the Service Provider shall not be responsible for any resulting delays, limitations of availability, deviations in performance or schedule changes. Any agreed response times, service levels or recovery times shall be extended accordingly.
- 9.7 Additional Effort and Temporary Suspension: Any additional effort arising from delayed cooperation, subsequent changes, inconsistent instructions or repeated adjustments attributable to the Customer shall be remunerated on a time and material basis in accordance with the agreed terms. If the Customer continues to fail to comply with its cooperation obligations despite written notice, the Service Provider shall be entitled to temporarily suspend the affected Services or support services in whole or in part. Any payment obligations of the Customer shall remain unaffected by such suspension.
- 9.8. The Principal shall define one or two competent contact persons (+ deputy) who are familiar with the systems, as well as a person responsible for installation (+ deputy) who have the necessary technical expertise. The defined contact persons and the person responsible for installation (as well as the deputies) must be available to provide any information necessary for maintenance and support.
- 9.9. In the event of disruptions, the Principal shall in particular enable the Contractor to access the system for the purpose of remedying the problem and shall grant the necessary authorisations.

- 9.10. Before starting to use them, the Principal shall thoroughly test all programs and program parts received during maintenance to ensure that they are free from errors and usable in the specific situation.
- 9.11. The Principal shall have maintenance and support services for the Software and its other IT carried out only by persons qualified to do so.
- 9.12. The Principal shall be obliged to operate a test environment on its infrastructure which corresponds to the productive system in terms of specifications, i.e. the operational system, patching, access. The exact dimensioning of the CPU and RAM may be adapted to the usage pattern (simultaneous users, data stock). The Contractor may, at the Principal's request, provide an additional test environment at a charge.
- 9.13. The Principal shall indemnify the Contractor against all legal claims of third parties and fully reimburse all resulting costs (including reasonable legal defence costs) which are attributable to a use of the contractual services by the Principal which is contrary to this Contract or laws or otherwise unlawful. This shall not apply if the Principal is not responsible for the infringement. If the Principal becomes aware that such legal claims by third parties are imminent, it shall inform the Contractor without undue delay in writing or by email. The Principal shall fully support the Contractor in defending against such claims, insofar as this is not unreasonable for the Principal.

10. LIABILITY

- 10.1. Unless otherwise agreed below, liability shall be governed by the statutory provisions. Any guarantee must be in writing in order to be effective.
- 10.2. The Contractor shall be liable without limitation for intentional or grossly negligent conduct and always in the event of injury to life, limb or health, in cases of malice, in the event of the assumption of a guarantee, or in the event of claims under the German Product Liability Act (ProdHaftG).
- 10.3. In the event of simple negligence, the Contractor shall only be liable for the breach of essential contractual obligations. Essential contractual obligations are those obligations whose fulfilment makes possible the correct execution of the Contract in the first place and on compliance with which the other Party may rely. In the event of a negligent breach of an essential contractual obligation, the liability of the Contractor shall be limited to compensation for foreseeable and typical damage.

- 10.4. In the event of loss of data, the Contractor shall only be liable for the costs that would have been necessary to restore the data if the Principal had properly and regularly backed up the data. This limitation shall not apply insofar as the data backup is an integral part of the services to be provided by the Contractor.
- 10.5. Insofar as the liability of the Contractor is limited or excluded, the limitations or exclusions shall also apply
- 10.5.1. to the personal liability of the Contractor's employees, legal representatives and parties it uses to perform its obligations;
- 10.5.2 to claims for reimbursement of futile expenses; and
- 10.5.3. retroactively to the same extent for claims arising from the breach of obligations during the negotiations for this Contract.

11. WARRANTY FOR MATERIAL AND LEGAL DEFECTS

- 11.1. The Contractor warrants that the Software is functional in accordance with this Contract. In this respect, the Contractor also warrants that the Software or an individual component of the Software does not infringe any third-party rights. Unless otherwise stipulated below, the statutory provisions on warranty shall apply.
- 11.2. The Contractor shall provide the maintenance and support services in a professional manner and in accordance with the state of the art. In the case of maintenance and support services, the Contractor shall be liable in accordance with the rules of service contract law.
- 11.3. The Principal shall not be entitled to any statutory warranty claims
- 11.3.1. in the case of only insignificant deviation from the agreed quality or only insignificant impairment of serviceability of the Software,
- 11.3.2. in the event of defects caused by non-compliance with the contractual provisions and/or the conditions specified in the Software specifications,

- 11.3.3. in the event of incorrect operation by the Principal,
 - 11.3.4. in the event that hardware, software or other equipment is used which is not suitable for the use of the Contractor's Software,
 - 11.3.5. if the Principal fails to report a defect without undue delay and the Contractor was unable to remedy the defect as a result of the failure to report the defect without undue delay, or
 - 11.3.6. if the Principal is aware of the defect at the time of conclusion of the Contract and has not reserved its rights.
- 11.4. Insofar as a defect has been reported by the Principal and the Principal's warranty claims are not excluded, the Contractor shall be obliged to remedy the defect within a reasonable period of time by taking measures of its own choice. The Principal shall give the Contractor reasonable time and opportunity to remedy the defect. The Contractor's employees and agents shall be granted free access to the Principal's systems for this purpose, insofar as this is necessary to remedy the defect.
- 11.5. If the Contractor does not successfully complete the rectification of defects within a reasonable period of time set for it, the Principal may either set the Contractor a further reasonable period of time and, if this period expires without success, reduce the remuneration appropriately or withdraw from the Contract in whole or in part. However, the right to withdraw from the Contract due to an insignificant defect shall be excluded.
- 11.6. If the defect has not been caused by the Contractor, but is due, for example, to faulty operation or faulty configuration on the part of the Principal, the Contractor shall be entitled to invoice its costs for remedying the defect in accordance with the remuneration agreed in the offer.
- 11.7. If a third party asserts claims against the Principal due to the infringement of property rights by the Contractor's services and if their use is impaired or prohibited as a result, the Contractor shall, at its reasonable discretion, either procure the necessary right of use to the infringed rights for the Principal at its own expense or replace or modify the services in such a way that the rights of third parties are no longer infringed but continue to comply with the contractual agreements.

- 11.8. Unless otherwise agreed, the limitation period for claims for material and legal defects shall generally be twelve months. Notwithstanding the above, claims shall become statute-barred within the regular limitation period if the Contractor has fraudulently concealed the defect. In this case, however, the limitation period shall not end before the periods pursuant to sentence 1.

12. RIGHTS TO THE SOFTWARE AND TO THE MAINTENANCE AND SUPPORT SERVICES

- 12.1. All rights to the Software, in particular ownership and copyright, shall remain unconditionally with the Contractor. The only exception to this shall be the ownership and the right of use granted in this Contract to the Software purchased by the Principal. The Contractor shall grant the Principal rights of use for new Software versions (updates, releases, upgrades) as and to the extent that they exist for the Principal's Software.
- 12.2 All rights to the maintenance and support services, in particular the comprehensive copyright with all partial rights, shall be the exclusive property of the Contractor worldwide. Insofar as these have been created on the basis of the Principal's specifications or with its cooperation, the Principal shall waive its rights of exploitation pursuant to Sect. 8(4) of the Germany Copyright Act (UrhG). The Principal shall have the non-exclusive rights of use to the maintenance and support services provided in accordance with this Contract.
- 12.3. In particular, the Principal shall be prohibited from copying the Software without express permission, reverse engineering the Software, copying the maintenance and support services without express permission, passing them on without express permission, and developing similar services based on the Contractor's services.

13. REMUNERATION AND PAYMENT TERMS

- 13.1. The costs for the services described in the offer shall comprise the one-off costs for the introduction and permanent provision of the Software (including the right of use) and the monthly costs for maintenance and support. The latter shall be invoiced in advance at the beginning of each calendar year. The payment term shall be 30 days.

- 13.2. If the Contract is concluded during a calendar year, an invoice shall be issued for the remaining months of that year. Thereafter, invoicing shall take place at the beginning of the calendar year.
- 13.3. The explicit costs shall be shown in the Contractor's offer.
- 13.4. The agreed remuneration shall include all expenses and charges. The costs stated are exclusive of statutory turnover tax.
- 13.5. If additional Software products are made available as agreed during the term of the Contract, the costs for maintenance and support shall increase accordingly. The method of calculation shall be shown on the next annual invoice.
- 13.6. Additional services shall be invoiced according to the general remuneration agreed in the offer.
- 13.7. If the Principal is in default with the above terms of payment, the Contractor shall be entitled to charge interest on arrears at a rate of nine percentage points above the base rate (from the first reminder). In addition, the Contractor shall be entitled to charge a reminder fee of €50 for the first reminder and €50 for the second reminder.

14. CONTRACT TERM, TERMINATION, CONTRACT AMENDMENT, PRICE CHANGE

- 14.1. Term: This Contract shall enter into force upon signature of the offer by the Parties and shall end at the end of the same calendar year.
- 14.2. Automatic renewal: If this Contract is not terminated by either Party within the notice period, the term shall be automatically extended by a further calendar year.
- 14.3. Notice period: This Contract can be terminated by either Party with three (3) months' notice to the end of a calendar year. Notice of termination must be given in writing.
- 14.4. Amendments: If the Contractor announces amendments (prices, terms, etc.) for the new calendar year in writing or by email no later than two (2) months before the end of the current calendar year, the Principal shall be entitled to either accept the amendments, demand amendments or corrections on its part, or terminate the Contract for cause – within one (1) month, and in writing or by email. In this case, notice of

termination must be given in writing or by email with one (1) month's notice to the end of the year. In the absence of any reaction (in writing or by email) on the part of the Principal within one (1) month of receipt of the notification of the amendments, the proposed amendments shall be deemed to have been tacitly accepted. If the Principal proposes amendments by the deadline, the Contractor shall examine the requested modifications; in this case, however, an extension of the Contract shall only come about through an express acceptance by the Contractor declared in writing or by email. If no agreement is reached, the Contract shall end at the end of the current calendar year.

- 14.5. Furthermore, the Contractor shall be entitled to increase prices during the term of the Contract insofar as the costs on which the original price calculation was based increase due to circumstances unforeseeable by the Contractor and not caused or influenced by it. The Contractor shall be entitled to increase the price accordingly if

14.5.1. The nominal wage index of the average gross monthly earnings of employed workers in the manufacturing industry and in the service sector in Germany in the economic sector J62 – provision of information technology services – of the Federal Statistical Office has changed by at least 0.5 % since the commencement of the Contract or, in the case of amendments that have already taken place, since the last amendment;

14.5.2. Statutory ancillary wage costs increase;

14.5.3. Services of the Contractor contain service components of third parties and those service components are no longer available to the Contractor or are only available in a modified form and/or at modified prices, without the Contractor being responsible for this and the Contractor's costs for providing the service increase as a result.

The Contractor shall give two months' notice in text form of this increase and send an updated cost overview. The price increase may not exceed 10 % of the current remuneration.

- 14.6. Termination without notice for good cause: The Parties reserve the right to terminate the Contract in whole or in part at any time without notice for good cause. The Contractor may invoke good cause in particular if (i) maintenance or support services are significantly impeded by improper use of the Software or due to the connection of unsuitable hardware or software (as communicated in the offer), or (ii) the Principal

continues to fail to comply with the maintenance and support requirements and duties to cooperate set out in this Contract despite a warning and expiry of a reasonable grace period. Either Party shall have good cause if, for example, the other Party continues to violate important contractual obligations despite a written warning or if bankruptcy or succession proceedings are instituted against the assets of one of the Parties or if the institution of such proceedings is refused for lack of assets. Termination without notice must also be in writing.

- 14.7. Termination of this Contract shall have no effect on the Principal's rights to the Software made available to it and the rights of use granted for it, as these were purchased and granted for an unlimited period of time.

15. FORCE MAJEURE

- 15.1. Events involving force majeure that make it significantly more difficult or impossible for a Party to perform a service or obligation shall entitle the affected Party to postpone the performance of such service or obligation for the duration of the hindrance plus a reasonable start-up period. In such cases, the affected Party must inform the other Party without undue delay in writing or by email.
- 15.2. Events involving force majeure means unforeseeable circumstances that are beyond the respective Party's sphere of influence that occur after the conclusion of this Contract and cause serious obstacles to performance, including but not limited to strikes and lockouts, machine or power failures, disruption of telecommunications channels, natural disasters, national emergencies, unrest, vandalism, terrorism, war, riots, pandemics and epidemics, as well as the occurrence of such events at subcontractors.

16. STRUCTURE AND PRECEDENCE

- 16.1. In the event of any conflicts between the documents of this Contract, the following order of precedence shall apply:
- (i) The offer and its annexes;
 - (ii) The provisions of this Contract.

- 16.2. If the Principal has its own general terms and conditions, then these – irrespective of what they are called – shall only apply between the Parties insofar as the Contractor expressly confirms this in writing.

17. FINAL PROVISIONS

- 17.1 The Principal hereby grants the Contractor the right, in the context of its commercial activities, to name the Principal as a reference using its company name and company logo.
- 17.2. The Principal may not assign or otherwise transfer its rights under this Contract or delegate its obligations under this Contract without the Contractor's prior written consent. Any attempt to do so shall be invalid.
- 17.3. Should individual provisions of this Contract be invalid or ineffective, or should performance become impossible, this shall not affect the effectiveness of the remaining parts of the Contract. In this case, the Parties undertake to replace the invalid, ineffective or impossible provision without undue delay with a permissible, effective and possible arrangement which, in terms of its content, comes as close as possible to the original intention. The same shall apply in the event of a gap in the Contract.
- 17.4. This Contract may only be amended, cancelled or supplemented by means of the statutory written form. This shall also apply to any amendment or cancellation of this requirement of the written form. This shall not apply if expressly agreed otherwise in this Contract.
- 17.5. This Contract shall be subject to the law of the Federal Republic of Germany, with no consideration of private international law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 17.6 Disputes arising from or in connection with this Contract shall be subject exclusively to the jurisdiction of the competent court at the registered office of the Contractor.