

# Software Maintenance Agreement

Version: August 06, 2020

## 1 Subject of the Agreement

(1) The subject of this Agreement is for us ("AGRAMKOW" or "we") to provide maintenance services for the software products (the "Software") listed in the Annex.

(2) Maintenance is to be carried out in accordance with the current state of the art; there are no predetermined maintenance schedules. The performances according to the agreement can also be assigned by us to third parties.

## 2 Scope of Performance

### 2.1 Software Maintenance

(1) Software maintenance includes ongoing software development and the assignment of the software improvements resulting therefrom, namely:

- o Updates (error corrections for the current development version, in general not including performance or functionality expansions)
- o Upgrades (new software versions, including performance and/or functionality expansions)
- o Releases (upgrades with greater scope of functionality, identified by us only as a Release)

All other performances are to be billed separately, in particular the installation of software developments and the correction of disruptions in connection with other programs which were not provided by us.

(2) Software development always proceeds based on the two most recent effective software releases, respectively. We will only continue to support the three most recent releases.

### 2.2 Use of Software Developments by the Customer

(1) We agree to issue the software developments and associated documentation to the customer upon its market release. The customer will retain the same rights to further developments as it has to the originally-purchased software. This does not apply to developments we offer separately as new programs that are not related to the originally-purchased software.

(2) The customer will ensure that its data processing system (DP system) and system software, respectively, have the technical capacity required for the use of our software and developments thereof according to present regulations. In particular, a new release can require that the customer install an updated version of its system software. We will notify the customer in a timely manner as to when and which prerequisites will need to be implemented for use with the improved software.

(3) The customer will inform us in advance when it intends to install a new release of the required system software. The customer will provide us with a tailored test system for this purpose.

### 2.3 Fees for Software Maintenance and Payment

(1) The calculation basis for the software maintenance fee is the gross license value (GLV) of the software licenses purchased from us.

(2) Unless otherwise contractually regulated, our compensation must be paid annually in advance. Our prices are understood to be net and are subject to applicable VAT.

(3) Payments must be made without any deductions to one of our designated accounts.

(4) The customer can offset payment or exercise a right of retention only if the counterclaim as such, as well as

the value thereof, is uncontested or has been declared legally enforceable by a court of competent jurisdiction.

(5) Payments by the customer are due no later than 30 days after receipt of our invoice by the customer.

(6) The prices in the offer apply only to purchases of the full scope of the performances offered.

## 3 General Terms and Conditions

### 3.1 Term of Agreement

(1) The term is one year (base term). The term will extend by an additional 12 months (extension period) unless the Agreement is terminated in writing by a contractual partner 3 months prior to the expiration of the base term or an extension period.

(2) The right to termination without notice for good cause remains unaffected for both parties.

### 3.2 Warranty

(1) The rights of the customer resulting from this software maintenance agreement are independent of any new guarantee claims arising from the software assignment agreement between the parties. In this regard, the customer's guarantee rights remain unaffected and continue to be in effect.

(2) Material defect claims regarding developments provided, unless they are simply error fixes, are determined according to § 6 of our Software Licensing Terms and Conditions. Defect claims require that the customer has properly met its inspection and complaint obligations according to § 377 of the HGB [German Commercial Code]. Customer claims regarding legal defects are determined according to § 5 of our Software Licensing Terms and Conditions.

### 3.3 Liability

(1) We only assume unlimited liability for the following cases, even if the damages are due to violations during contract negotiations for any legal reason (including, in particular, damages not directly arising in the software itself being maintained):

- intentional damages
- gross negligence
- culpable injury to life, body or health
- defects that we have fraudulently concealed
- infringement of guarantees assumed by us relating to quality and/or durability
- cases of statutory liability (such as damages under the German Product Liability Act)

(2) Damage caused by us due to minor negligence will only be compensated if the violation involves a material obligation whose fulfillment is absolutely required in order to enable the proper execution of the agreement, and if the customer regularly relies on fulfillment of said obligation (cardinal obligations). In this case, the scope of our liability is further limited to damages which we have typically experienced and expect to occur, considering the circumstances known to us at the time of signing of the agreement and in light of the nature of the contractual agreements.

(3) In the process, it must be kept in mind that we are responsible for exercising that degree of care which is common in the industry, and cannot provide software and other programming services completely without errors.

(4) The customer will carry out appropriate and regular data

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security measures, in particular in the form of backups that are available and restorable at all times. For loss of data and recovery thereof, we are only liable if the customer's appropriate data security measures could not have prevented the loss. The customer must provide proof of these regularly-executed data security measures. The liability for data losses or damage caused by us is limited to the extent of remedy that would have been required from a proper data security system set up to restore the data from the secured data material.

(5) Compensation for property damage is based on the general principles of good faith, and is limited to cases where there is a disproportion between the order value and the loss amount.

(6) Any further liability - irrespective of the legal grounds -, particularly in relation to compensation for damage not arising from the software maintenance, is excluded.

(7) The above liability exclusions and limitations also apply to our employees, representatives, bodies and agents, and other third parties whom we employ for the purposes of contract fulfillment

### 3.4 Confidentiality

(1) The contractual parties agree to maintain confidentiality about confidential information exchanged in connection with this Agreement for an unlimited time, and neither to exploit this information or have the information exploited within the company

– including all associated companies, subsidiaries, branches, consultants, employees and all similar persons, companies or other natural or legal persons – nor to use the information itself in any way or have a third party use it. Confidential information is made accessible internally only to employees who require the information to fulfill their obligations and who are in turn obligated to maintain its confidentiality.

(2) With regard to this Agreement, information that is deemed to be confidential includes – by way of example, but not limited to

– any and all software, including source code, all company secrets, all information and all data or other unpublished or confidential information regarding products, processes, know-how, design, formulas, algorithms, drafts, developments, research, computer programs or parts of computer programs (including source code), interfaces, databases and other copyrighted works or any other information regarding the business activity

of the parties and employees, consultants, licensees or other persons associated therewith that is made known in the context of this Agreement and identified or that is shared and identified in any way as confidential in written, electronic, physical or oral form.

(3) The above obligation of confidentiality does not exist if and to the extent that the information in question can be proved to have already been made public or published or to have been made generally accessible, or to have become publicly known for reasons for which the recipient cannot be held accountable, or to have been made legally public by a third party after disclosure to the recipient and without restriction with respect to confidentiality or use.

### 3.5 Final Provisions

(1) If the customer's headquarters are within the Federal Republic of Germany, the court of jurisdiction is the court of our corporate headquarters. However, we reserve the right to file suit in the customer's court of jurisdiction.

(2) If the customer has its headquarters outside the Federal Republic of Germany, then disputes shall be settled at the International Chamber of Commerce in Paris according to the ICC rules of arbitration. This ruling shall be final. It must be heard and decided by three arbitrators. Our insurer may participate in this process as normally allowed by law. We reserve the right to file suit at a lawful court of jurisdiction.

(3) The laws of the Federal Republic of Germany apply, to the exclusion of conflict-of-law standards and the UN Convention on Contracts for the International Sale of Goods (CISG).

(4) The written form can be replaced by a fax, but not the electronic form according to § 126a of the BGB [German Civil Code] or the text form according to § 126b of the BGB.

(5) If individual provisions of these Software Maintenance Terms and Conditions or of agreements concluded based on these Software Maintenance Terms and Conditions are or become ineffective in full or in part, the remaining provisions of the contract will be unaffected

**1. Software**

Program maintenance is provided for the following software:

PLIS Smart Suite