

Medien Elektronik Software

Software Maintenance Agreement

No: YYYYMMDD01

Between

MES Medien Elektronik Software
Neuendorfstrasse 18b
D-16761 Hennigsdorf

- contractor -

and acting on its own behalf or on behalf of its clients

Company Name
Street Number
12345 Town/City

- principal -

The following agreement is made:

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§ 1 Subject matter of agreement

(1) The contractor – hereinafter “MES” – agrees to undertake for the principal the maintenance of the following software programs – hereinafter the “software”:

Pos.	Name/description	Activation key
		- -
		- -
		- -
		- -
		- -
		- -
		- -
		- -
		- -
		- -

(2) The maintenance of the software refers to the last version of the program released and made available to the principal by MES. This includes additional modules acquired later and related additional licences. The remuneration for the maintenance is to be adjusted according to the provisions under § 4.

(3) The purpose of this agreement is to support the principal in analysing possible errors and troubleshooting issues to the software made available to the principal. In order to achieve this, MES provide advice to the principal or Updates (new program versions addressing bugs) via download, e-mail or by data carriers.

§ 2 Type and scope of the software maintenance

(1) The maintenance of the software includes the following services by MES:

- providing advice to the principal via telephone or e-mail
- analysing of errors occurred and support in troubleshooting
- compliance with the guaranteed feedback time to questions by the principal
- providing special offers for purchase of the latest software version released by MES

(2) MES will analyse software errors notified to it by the principal and will advise the principal on how to address the error and its consequences, to the extent this is possible. In the event of critical errors MES will address these within the context of one of the succeeding new programs.

(3) MES will advise the principal by telephone or via e-mail concerning installation and configuration issues. This refers explicitly only to the software specified under § 1 of this agreement.

(4) MES guarantees a response to questions from the principal via telephone or e-mail on the working day (at the MES office) following the day the question was submitted.

(5) Advice by MES is given in German. Requirements that are not made in German will usually be answered in English. Other languages can be agreed; however the cost for translations will be billed to the principal.

(6) The maintenance of the software does not include the installation of updates, upgrades and new software as well as the removal of errors and damage caused by inadequate handling by the principal, through the influence of third parties, or by force majeure. This applies also to errors and damage caused by ambient conditions at the location of installation, by errors or non-performance of power supply, defective hardware or other events outside the control of MES. In such individual cases, suitable services can be agreed separately according to corresponding remuneration.

(7) Advice and training on questions concerning the use of the software – unless serving the purpose of removing errors – are similarly not within the scope of services under this agreement

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§ 3 The principal's obligation to cooperate

(1) The principal shall always notify MES of its individual identification where questions are submitted via telephone or mail. The number of this maintenance agreement or the identkey of one of the programs listed under § 1 sec. 1 serves as the identification for this purpose.

(2) The principal shall immediately inform MES about any errors that occur and will support MES in the analysis of errors and troubleshooting to the extent reasonable. This includes the submission to MES of written defect reports and other data and protocols suitable and necessary for the error analysis.

(3) The MES service staff shall be granted access to the data processing units onto which the software listed under § 1 is installed. In addition, the principal is responsible for the provision of all technical equipment necessary for carrying out the maintenance work, and shall make the same available at no extra cost to MES insofar as is reasonable.

(4) The principal shall nominate a competent member of their staff to MES, who is technically astute and responsible for the system, can give information necessary for the implementation of this contract, and is entitled to make or execute the required decisions him/herself.

(5) It is the principal's duty to make regular and adequate backups, and to service and maintain the software and hardware environment for the software. If the principal fails to fulfil its obligation to cooperate, or does so insufficiently, MES shall not be responsible for any delays or non-performance arising therefrom.

§ 4 Remuneration

(1) The remuneration for the services provided by MES under this agreement will be 999.99 EUR per contract year, calculated either according to a price list valid at the commencement of this agreement or from an individual offer.

(2) The stated remuneration shall be adjusted by a specific agreement in the case of an extension or an amendment to the software listed under § 1.

(3) The remuneration for the services is payable annually in advance. Payment is due at the beginning of each contract year upon invoice from MES.

(4) MES is entitled to increase the agreed sum by a reasonable amount by unilateral declaration in writing delivered to the principal. Any such increase will at the earliest be effective from the beginning of the succeeding contract year and may not exceed the remuneration of the current contract year by more than 10 %. For the purpose of this clause the contract year ends on the day before each anniversary date of this contract.

(5) VAT will be added to the remuneration.

§ 5 Data protection

(1) Both parties bind themselves to professional secrecy concerning all business and operational matters and all information in the context of this agreement, also after expiry of the agreement. This also applies to person-related data that are subject to the German Data Protection Act (*Datenschutzgesetz*).

(2) MES hereby agrees to treat all information, documents and data in the context of this agreement confidentially; MES will not record, nor store, nor copy, nor use, or process them for any other purpose than the maintenance of the software.

(3) MES hereby agrees to instruct its staff accordingly, and to oblige them to comply with these provisions.

§ 6 Right of use

(1) In respect of any items subject to this agreement and provided to MES in accordance with this agreement (e.g. Updates), the principal holds a right of use under valid license agreements. MES agrees to indemnify the principal from claims brought by third parties concerning the use of these programs.

(2) If the principal utilises any item subject to this agreement that designed to replace an earlier item, the right of use for the replaced item ceases.

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§ 7 Liability of contractor

- (1) MES and its service assistants are fully liable to the principal in the case of intentional damage as well as upon provision of a warranty concerning agreed specifications; in the case of gross negligence up to the amount of the reasonably foreseeable damage which was preventable by prudent action; in the case of simple negligence, only upon violation of an essential duty shall MES be liable for the typical and essential damage, limited to the amount of the reimbursement paid for maintenance in the respective contract year. Partial contract years will be calculated pro rata to a complete contract year.
- (2) The legal liability in the case of personal injury and according to the German Product Liability Act (*Produkthaftungsgesetz*) remains unaffected. MES reserves the right to claim in the event of contributory negligence.
- (3) In the case of data losses, MES is liable only for that part of the damage which would have occurred had proper data backups been carried out by the principal.

§ 8 Duration of agreement

- (1) The agreement commences at the date of signing by both parties.
- (2) The contract is for a period of one year, and will be extended by one further year each unless cancelled by one of the parties on 3 months' notice prior to the end of any contract year, at the earliest after 12 months.
- (3) Any notice of termination must be in writing.

§ 9 Miscellaneous

- (1) If any provision of this agreement should be or become ineffective or if an essential aspect is not covered by a provision, the effectiveness of all the other terms and conditions remains unaffected. The parties hereby agree to substitute the ineffective clause by a provision that as closely resembles the provision which the parties would have agreed on if they had known that the clause is ineffective.
- (2) Amendments and supplements to this agreement must be in writing, must refer to this agreement and have to be signed by both parties.
- (3) Place of performance and jurisdiction for all litigation resulting from this agreement is the place of business of MES, provided that the principal is a merchant (*Kaufmann*) or a legal entity under public law.
- (4) This agreement shall be subject to and construed in accordance with the laws of Germany.

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(town/city, date)

.....
(town/city, date)

.....
(Principal)

.....
(MES)