



Software update contract

Sm@rtLine Data Cockpit (SDC)[®] ("SOFTWARE" or "PROGRAM")

This contract („CONTRACT") is between company "AGU Planungsgesellschaft mbH für Automatisierungs-, Gebäude- und Umwelttechnik mbH", Von Ketteler Strasse 1, 51371 Leverkusen, Germany („AGU") and the licensee ("LN") and includes the software maintenance services and support services described here.

Software maintenance services (see Section 3) and support services (see Section 4) will be invoiced according to the terms of the offer.

Specifications of the offer replace the specifications made in this contract.

Should LN enter into the CONTRACT, LN shall receive every update of the module versions the LN has purchased for the term of the CONTRACT. This includes hotfixes, updates and upgrades. Maintenance is performed in the current major version and the current (last) upgrade version. The time and effort for installation will be charged separately, if carried out by AGU.

If LN does not conclude a CONTRACT, LN shall only receive hotfixes and updates within the warranty period. If the customer wants to upgrade to a current version at a later date, the maintenance fee must be paid additionally (from the date of purchase). Alternatively, the license holder may purchase a new version of the SOFTWARE.

1 Definition of Terms

1.1 Incident

An „Incident“ is a situation in which the LN needs help without it have been established whether a "technical error", a faulty operation or a defect has caused the situation.

A „Critical incident" is an incident that completely or partially prevents the usability of the SOFTWARE or seriously impairs the productive operation (business processes) of the LN.

A „Serious Incident" means an "Incident" which neither prevents the usability of the SOFTWARE nor seriously impairs the productive operation (business processes) of the LN, but which restricts the usability of the SOFTWARE and has noticeable effects on the productive operation (business processes) of the LN. The effects on the productive operation (business processes) of the LN can be reduced to a tolerable level by appropriate circumventive measures. The simultaneous occurrence of several "Serious Incidents" can lead to a "Critical Incident" of the service as a whole.

An „Ordinary Incident" is an "Incident" which restricts the usability of the SOFTWARE but has only a minor influence on the productive operation (business processes) of the LN.

An „Insignificant Incident" is an "Incident" which only insignificantly restricts the usability of the SOFTWARE and has only minimal influence on the productive operation (business processes) of the LN.

1.2 Working Days

„Working days“ are weekdays from Monday to Friday. Troubleshooting is carried out during AGU's regular office hours from Monday to Friday between 09.00 to 15.00, except on public holidays. The time zone Berlin applies.

1.3 Holidays

„Holidays“ shall include those valid for North Rhine-Westphalia; “holidays” shall also mean the 24th and 31st of December of each year. They begin the day before at 15:00 and end the next "working day" at 9:00. The time zone Berlin applies. In addition, AGU bridge days are also considered "holidays".

1.4 Release management

The release identifier is structured as follows: "Major version.Upgrade.Update.Hotfix". When a new major release (first digit) is created, the previous release (upgrade) is the last major release with the highest second digit.

1.5 Hotfix, Update, Upgrade, Modul-Upgrade

(1) „**Hotfix**“(n.n.n.Hotfix) is a program version developed by AGU to correct or circumvent "technical errors" in the SOFTWARE which is made available to the LN by AGU and which has undergone only very limited functional tests, system tests, regression tests or other test procedures which AGU otherwise uses as part of normal quality assurance. The goal of a "hotfix" is to provide an error correction as quickly as possible. Each "hotfix" is uniquely identifiable by its version number. A "hotfix" can only be installed on a clearly named "program version". Hotfixes change the program version at the fourth decimal place only. A hotfix does not extend the warranty period

(2) „**Update**“(n.n.Update.n) usually refers to minor improvements within the release planning, such as optimizations in the program execution speed, adaptation of existing functions (not new modules) and system optimizations (within the warranty) in the SOFTWARE. "Updates" change the program version only in the third place. An update does not extend the warranty period.

(3) „**Upgrade**“(n.Upgrade.n.n) extends a software significantly with new functions within the licensed modules, including operating system adaptations, database system adaptations, SML framework adaptations. It stands for a new version of the software and is indicated by a change in the program version at the first or second position. An upgrade does not extend the warranty period.

(4) "**Module Upgrade**" extends the software considerably by new modules subject to license, which the customer purchases (these are subject to a fee). The definition of the modules can be found in the offer. By using the "Module Upgrade" the amount of the CONTRACT increases. For the Module Upgrade a warranty period of 12 months for the new module applies.

1.6 1st Level Support

„1st Level Support“ includes the acceptance of a customer inquiry on any topic. Content of the 1st level support is classification of the incident according to the customer's question. It includes the answering of questions regarding the operation of the software and assistance with routine tasks. In case of more complicated tasks and problems, the incident is forwarded to the 2nd level support.

1.7 2nd Level Support

„2nd Level Support“ denotes more complicated, rarely occurring problems/tasks that require further clarification. AGU clarifies in cooperation with the customer the general conditions that have led to the problem and tries to find a solution in the form of a workaround. Problems that cannot be solved are forwarded to the 3rd level support (development).

1.8 3rd Level Support

„3rd Level Support“ refers to problems in the SOFTWARE that can only be solved by making changes to the SOFTWARE as part of a hotfix or release planning

1.9 Administrators

„Administrators“ are the group of employees at the LN who work administratively with the programs. The number of employees should not exceed 5. The "administrators" are the only people authorized to submit support requests and error messages to AGU.



1.10 Place of Performance

"Support services" shall be executed at AGU's place of business.

1.11 Product application support

The content of the services may include product application support, which is invoiced according to the terms of the offer.

1.12 Support

Support includes 1st and 2nd level support and is described in section 4.

1.13 Maintenance

Maintenance includes 3rd level support and software maintenance is described in Section 3.

2 General Information

2.1 Duration of Contract / Termination

This contract runs for an indefinite period of time. It initially runs for the remainder of the calendar year in which it was concluded. If this date is after the 30.6. of the calendar year, then it runs at least the following full calendar year. Subsequently, this contract is automatically extended by a further year, unless it is terminated by one of the two contracting partners 1 month before the end of the contract year.

2.2 Follow-up Training

AGU shall make competent personnel available for the training/retraining requested by the LN on a time and effort basis or a separate quotation..

2.3 Documents

The LN is obliged to store all documents of the SOFTWARE carefully and to ensure that their contents do not come to the knowledge of unauthorized person.

2.4 Data Protection and Protection of License Programs

The LN shall ensure the fulfilment of his obligation under this contract and the license agreement with regard to the use, reproduction, modification, protection and security of the programs by taking appropriate measures with and for employees and other persons who are permitted access to the programs. These obligations shall remain effective even after termination of the contract.

2.5 Quality assurance by the LN

Any modification of the SOFTWARE itself or the "system environment" can theoretically lead to a malfunction of the SOFTWARE. In principle, each modification requires the LN to carry out the following process: data backup, data backup test, new software test in the old system environment, old software test in the changed system environment, and go live.

2.6 Warranty

The warranty begins with the completed initial installation and transmission of the licenses. In all other respects the conditions of the license agreement apply!

Scope of warranty - AGU warrants:

- that AGU is entitled and technically capable to provide the maintenance services in accordance with the contract,
- that the current program versions can be used according to the specifications and functions specified in the license agreement or the quotation if the defined system environment exists.

AGU guarantees that the SOFTWARE can be used by the LN on the system environment specified by AGU (hardware, network, operating system, database) in accordance with the SOFTWARE specification and manuals.

AGU accepts no liability for the correctness of the data shown (metadata, etc.). The customer is responsible for checking the contents.

The warranty period is 12 months unless otherwise specified in the offer.

Any notice of defect must be given immediately in writing stating the SOFTWARE and the program version used as well as the defect and the information available for error diagnosis and elimination. Upon receipt of such notice of defects, the AGU shall be obligated to either test or inspect the SOFTWARE. The AGU shall make the replaced or defect-free program version available to the LN free of charge.

2.7 Obligations of the LN

The LN is:

- (1) To follow the operating instructions of the SOFTWARE and all other available instructions and to ensure that the SOFTWARE is only used by appropriately trained personnel.
- (2) store the SOFTWARE in accordance with the terms of this Agreement
- (3) to have all maintenance and support work performed only by AGU
- (4) to immediately notify AGU of all malfunctions (errors) by telephone (with immediate written confirmation) or in writing (e-mail). To provide AGU with all documents required for the description and diagnosis of the error (protocols of the system software, protocols of the user software, records, etc.) and to provide AGU with all information on the type and origin of the error.
- (5) to regularly make suitable backup copies of all data
- (6) to install and use the SOFTWARE and new versions only on the defined system environment.
- (7) to provide AGU with remote access for the performance of maintenance work.
- (8) update operating system or hardware only after release by AGU.
- (9) The LN is responsible for installing patches and subsequently checking the functionality of the SOFTWARE.

2.8 Data Provided

AGU provides the LN with basic data (e.g. standards categories, languages, etc.) for the various product versions of SOFTWARE. The type and scope of this data is listed in the offer. The LN must check this data and release the data for their own use. AGU assumes no liability for the correctness of the data information.

2.9 General Provisions

- (1) This contract is subject to the law of the Federal Republic of Germany. The application of the "Uniform Law on the International Sale of Goods" and the "Uniform Law on the Conclusion of International Sales Contracts" as well as the "United Nations Convention on Contracts for the International Sale of Goods" are excluded.
- (2) For disputes arising out of or in connection with this agreement the following applies: All disputes arising in connection with this contract or its validity shall be settled in accordance with the Rules of Arbitration of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Cologne.
- (3) No ancillary agreements have been made. Amendments to this contract must be made in text form. The same applies to the cancellation of the text form clause.
- (4) Should any provision of this contract be invalid or unenforceable in whole or in part, the validity and enforceability of all other provisions of this contract shall not be affected thereby. The ineffective or unenforceable provision shall be deemed to be replaced by that effective and enforceable provision which comes as close as possible to the economic purpose pursued by the invalid or unenforceable provision.

3 Maintenance and 3rd Level Support

3.1 Subject of Maintenance

(1) AGU shall maintain and update the SOFTWARE programs in accordance with the terms of this CONTRACT.

(2) The LN expressly acknowledges that the necessary coordination between the system environment outlined in the CONTRACT, the network system, the operating personnel and the SOFTWARE does not guarantee the trouble-free use of the SOFTWARE. AGU draws attention to the fact that it is not possible according to modern technology to create and maintain SOFTWARE in such a way that it works faultlessly in all applications and combinations.

(3) The CONTRACT can only be concluded for all licensed modules of the SOFTWARE. If the LN acquires an additional program or program module after the conclusion of the software CONTRACT, the CONTRACT will automatically be extended to this program, and the corresponding maintenance fee will be charged.

(4) Maintenance can only be guaranteed for one current version and the previous version.

(5) AGU shall maintain the SOFTWARE to the best of its knowledge and belief and shall act to the satisfaction of the users.

(6) The LN may report errors and problems via the AGU Service Portal and make use of the maintenance services. The licensee must provide the serial number entered here, otherwise there is no entitlement to services.

3.2 Scope of Maintenance

AGU undertakes to provide the following care services during the term of the CONTRACT:

(1) This CONTRACT includes the maintenance of the program status in the following cases:

- Adjustments to new versions of the application server operating system, if this was discontinued
- Adjustments to new versions of the database if it has been discontinued
- Technical adaptations to ensure operability and maintainability on the systems defined in the SOFTWARE system requirements.
- Technical modifications of project-specific adaptations or interfaces provided that the LN does not change the technological requirements.
- 3rd level support also outside the warranty period

(2) The following services are not included in the care contract and therefore can only be provided by separate agreement against separate payment:

- the installation of the SOFTWARE
- 1st and 2nd level support services (see customer offer)
- Training on new versions takes place on a time and material basis
- the recovery of lost or deficient data
- maintenance services concerning the system software or such services that become necessary due to changes in the hardware or the system software.
- the elimination of errors caused by the LN
- handling errors and problems not related to the license program (SOFTWARE), e.g. printer settings, network problems, etc.
- Losses and damage caused directly or indirectly by actions or omissions in the operation of the LN.
- Special adaptations and additional requests of the LN

(3) Adjustments and improvements

- **Content of adaptations and improvements**

AGU will offer the LN improvements or new update versions free of charge during the CONTRACT. After naming the license number, the LN will then receive the new version free of charge or the password for downloading it from the internet. AGU reserves the right to incorporate essential functional enhancements of the SOFTWARE in a module to be licensed separately.

For certain adaptations, it may be necessary to update the (network) operating system to the version required by the AGU, as well as to install operating system extensions or database systems. Unless otherwise specified, these measures are carried out by the LN.

- **Form of the adaptations and improvements**

AGU informs the LN about adaptations and improvements in the product. AGU only maintains the current main version (first digit of the version key). The release of the SOFTWARE is coordinated with the LN. The LN is responsible for securing the data before the version change is carried out.

(4) Correction of suspected errors

- Deviations from the performance description, the specification or the documentation for the respective last program version are regarded as errors. If the LN suspects errors in the SOFTWARE, they must immediately inform AGU in writing and provide them with the necessary documents and data records and a precise description of the possible error. AGU shall analyze the documents and data records and, at their discretion, make the necessary corrections to the SOFTWARE and take any other measures it deems appropriate to avoid and/or prevent such errors in the SOFTWARE and, at their discretion, send the corrected program version and/or a list of the measures to be taken by the LN (work arounds) to the LN. However, AGU cannot guarantee that errors that are not caused by AGU will be eliminated and/or corrected.
- AGU reserves the right to provide corrections of errors in the SOFTWARE only as part of a new version.
- If AGU determines that suspected errors in the SOFTWARE are due to input errors or improper use of the SOFTWARE or unauthorized use of the SOFTWARE according to the license agreement, the LN shall pay for the hours spent on the investigation of the suspected errors according to time and effort.
- AGU can demand that the LN proves suspected errors. Suspicions of errors do not force AGU to search for errors.

3.3 Scope of Support

The LN names key users as contact persons for 1st, 2nd, 3rd level support.

The AGU will be at the LN's disposal from Monday to Friday (i.e. weekdays, except holidays and AGU bridge days) between 9.00 a.m. and 3.00 p.m. for information and advice on the use of the SOFTWARE.

The LN should consult the online help and, if necessary, the manuals before making any enquiries to AGU. The support does not, however, include components or software that were not included in the AGU scope of delivery. Extensive questions are to be asked in writing, preferably via service portal, e-mail, and are usually answered in writing.

3.4 Recovery

AGU shall restore the SOFTWARE on data carriers which have been damaged as a result of operating errors, program or hardware errors. However, the LN's data or data carriers of the will not be restored. The LN is obliged to back up its data on an ongoing basis.

3.5 Maintenance Fees

(1) The annual maintenance fee is specified in the offer and increases according to the terms of the offer. Unless otherwise specified in the offer, the following regulations apply: "The maintenance fee is payable in advance for the calendar year. For the first year, the fee is calculated per month (1/12) pro rata for the remaining calendar year.

(2) AGU is entitled to fix a new maintenance fee for the following calendar year at the latest 3 months before the end of the current calendar year by written notification to the license holder.

(3) LN may terminate the CONTRACT with a notice period of 3 months to the end of the calendar year.

4 Support

4.1 Scope of Support

The services for 1st and 2nd level support will be charged to the LN as specified in the quotation.

4.2 Support Portal

The parties agree on an "incident" tracking system for all support services that both parties can access to check or change the status of reported incidents. This system is the AGU support portal "AGU-SSP" accessible via the Internet. The "administrators" of the LN receive the necessary login information at the beginning of the contract. The LN must consult the online help and, if necessary, the manuals before making any enquiries to AGU. The support does not, however, include any components or software that was not part of the AGU's scope of delivery. Extensive questions must be asked in writing, preferably via the AGU support portal "AGU-SSP" or e-mail, and are usually answered in writing.

4.3 Categorization

Each "incident" shall be categorized by the LN according to the definitions for severity of an incident (Section 1.2); the categorization shall be confirmed by the AGU 1st level support team. If a consensual classification cannot be achieved, AGU shall decide using reasonable discretion in which category the "incident" should be classified, taking into account the impact of the incident on the customer's business processes.

4.4 1st Level Support

(1) Reports of "technical errors" and other support requests must be reported via the AGU support portal "AGU-SSP". If it is necessary to send an e-mail to the product team, this must be sent to the address mentioned in the product info.

(2) Support in the sense of these regulations is any problem-related answer to the representation of a software technical problem of the LN in connection with the "support programs". The tasks of the "1st level" do not include the clarification of content-related and organizational questions nor do they include instruction in the functionality of the SOFTWARE.

(3) Each request to the "AGU-SSP" shall be electronically documented and assigned a processing number. The 1st level support team passes on the documented "technical errors" to the extent that the 2nd level support team may need them to obtain further details or support regarding the reported incidents.

(4) Before contacting the "1st level", the LN shall try to solve the problem within a reasonable scope. In particular, the LN must observe the "documentation" and the help function of the SOFTWARE.

4.5 2nd Level Support

The 2nd level support team is responsible for finding workarounds for reported incidents.

(1) Technical support :the 2nd level support team provides technical support on a time and effort basis, which results from the use of the 2nd Level Support Team for incidents reported incorrectly (e.g. problems occurred due to improper use or configuration of the system). These will be charged separately according to the offer.

(2) Escalation to 3rd level support: the 2nd level support team has the contact information of the 3rd level support employees involved for the respective system. The 2nd level support team notifies the 3rd level support team of those incidents that require correction through changes in the software code.

(3) Scope: incidents caused by a change in the system environment of the LN are not covered by the 2nd level support services. Content or organizational questions or support measures during the introduction of the software are not covered by the 2nd level support services. These will be charged separately according to the quotation.

4.6 3rd Level Support

The 3rd level is provided as part of this CONTRACT section 3. The 3rd-Level Support Team is responsible for resolving those incidents that require changes to the software code.

In particular, the 3rd level support team will provide the LN with "solutions" which:

- fix the "technical error" (hotfix) or
- Describe a workaround or
- The error will be included in release planning and corrected at a later date.

4.7 Response and Recovery Times

The reaction times of the 1st and 2nd level are formulated in the quotation. If no specifications have been made, the following conditions apply:

Incident class	Response time within the service times
Critical	Within 1 working day when reported on a working day
Serious	Within 3 working days
Ordinary	Within 10 working days
Insignificant	Within 20 working days

Response time

- Response time is the period of time within the service time within which the system operator or the application system administrator (technical) begins with the error analysis.

Recovery time

- The recovery time is not guaranteed. The end customer may have to import their data backup.

4.8 Other Services

Other services shall be invoiced on a time and effort basis at the hourly rates specified in the quotation.

4.9 Obligation to Cooperate

In particular, the LN shall have the following obligations to cooperate:

(1) Server access

Access to the servers on which the SOFTWARE is installed as well as access to the necessary databases via remote maintenance.

The LN will provide AGU with a competent contact person on site for the provision of "support services" in order to guarantee a speedy execution of the services to be provided.

(2) Updating programs and/or program parts

The installation of the SOFTWARE provided by AGU takes place via installation routines or exchange of individual components at the LN and is carried out by AGU via remote maintenance.

The LN will check the "updates" installed by AGU after further instructions from AGU and will always comply with the suggestions for troubleshooting and troubleshooting provided by AGU.

(3) Confirmation of Troubleshooting

The LN should confirm the proper clarification of the incident and/or troubleshooting within 14 days via customer service. If the LN does not confirm, AGU can mark the "incident" or the troubleshooting as confirmed after 14 further days.

(4) Update of operating system or database

It is the responsibility of the LN to properly maintain the software and hardware environment of the SOFTWARE. It is recommended that the LN allow the implementation of operating system or database updates due to technical progress and/or for troubleshooting, which the respective suppliers/manufacturers offer as problem solutions or make as a condition for further maintenance. The LN is aware that "technical errors" in the SOFTWARE may also be due to the operating system or database version used. If AGU can prove that "technical errors" in the SOFTWARE are remedied by the use of new operating system or database versions, the LN waives their right to remedy these "technical errors" as long as they continue to use their older operating system or database version. The system releases apply here as referenced in the currently valid system requirements, which are available as documents on the internet pages of the manufacturers.

4.10 Warranty for the Function Maintenance

(1) The SOFTWARE shall not be deemed to be defective if AGU offers the LN an appropriate workaround to remedy a defect. AGU will change the SOFTWARE in case of an error at its own discretion.

(2) If AGU does not succeed in rectifying existing errors within the reasonable period of time, the LN is entitled to assert further warranty rights. The right to withdraw from the CONTRACT or to claim damages does not exist if the functionality of the "SOFTWARE" is not significantly impaired.

(3) The LN shall not have the right to remedy defects themselves and to claim compensation for the resulting expenses as long as AGU is prepared to remedy the defects and if further efforts to remedy the defects are reasonable for the LN. Irrespective of this, the following shall apply: If a further attempt at rectification by AGU is deemed unreasonable for the LN, the LN shall be obliged to inform AGU whenever and with regard to which defect they commission a "third party" to rectify the defect.

(4) Changes to the SOFTWARE or System Environment

If the "Customer" or a "third party" commissioned by the "Customer" makes changes to the SOFTWARE after its installation and acceptance and AGU has not given its prior consent, AGU shall not be obliged to remedy the defect, unless LN can prove that the defect was not caused by these changes and that these changes did not hinder the identification and remedy of the defect.

If the LN demands the removal of a material defect or defect of title after the contract has been terminated, the LN shall bear the burden of proof that the defect was caused by a defect in the services on the part of the AGU if the LN or a "third party" commissioned by the LN changed the SOFTWARE and/or the agreed "system environment" after the termination of the "Software Maintenance and Support Contract".

(5) Warranty claims shall expire twelve months after the date on which the LN was aware of the defect or should have been aware of it without gross negligence. This shall not apply in cases in which an occurring error in the maintenance service has led to damage to body, life and health and/or a guarantee promise is violated by the error and/or the damage is caused intentionally or grossly negligently. Claims under the Product Liability Act shall remain unaffected.

(6) If the LN has not expressly declared acceptance within fourteen days of rendering the services, the service shall be deemed accepted if AGU has informed the LN of these consequences of silence and the LN does not expressly refuse acceptance within five "working days" thereafter.

(7) If the services provided by AGU are not covered by the warranty, the LN shall bear the costs for the services provided, including all travel expenses and expenses incurred.



4.11 Support Fees

The information in the quotation applies. 1st and 2nd level support will be provided at the hourly rate stated in the quotation. The 3rd level support is included in the maintenance fee (see section 3.5).

(1) Scope of Support Fees: the 1st and 2nd support fees apply to "support services" regarding the test and production systems.

(2) Adjustment of hourly rates: AGU shall notify the LN of increases in the hourly rate with a notice period of three months to the end of the year. If the LN subsequently does not terminate this CONTRACT, the hourly rates shall apply for the new contract year.

(3) Non-existence of an "incident": if AGU can prove in the case of reported "technical faults" or other "support services" used that no "incident" has occurred, the expenses for troubleshooting and the services provided by AGU for troubleshooting shall be borne by the LN.