AGU Planungsgesellschaft für Automatisierungs-, Gebäude- und Umwelttechnik mbH

[QM System as per DIN ISO 9001:2008]

Telephone: 0214 86860-0
Telefax: 0214 86860-19
www.agu.de

AGU Planungsgesellschaft mbH • Von-Ketteler-Straße 1 • 51371 Leverkusen

Software update and 3rd level support contract

Sm@rtLine Data Cockpit (SDC)

This agreement ("AGREEMENT") is between company "AGU Planungsgesellschaft mbH für Automatisierungs-, Gebäude- und Umwelttechnik mbH", Von Ketteler Strasse 1, 51371 Leverkusen, Germany („AGU") or a partner company contracted and authorized by AGU, together referred to as "VENDOR" and the licensee ("LN"). VENDOR and LN are referred to together as "PARTIES".

The software update and 3rd level support contract has been concluded to the following conditions.

The goal of a contract is to secure a program version and/or the transfer of updated program versions, for example due to legal changes. It is not, however, to make technical changes, adaptations due to necessary, chargeable operating system changes or custom solutions and modification requests made by the CONTRACTING PARTNER. These will be quoted separately or billed according to time and effort.

AGU will maintain the software to the best of their knowledge and satisfaction of the CONTRACTING PARTNER. Liability is, however, excluded.

§ 1   Scope of the contract
1. AGU will maintain the following programs according to the conditions of this contract:
   - Sm@rtLine Data Cockpit Web Solution
   - Sm@rtLine Data Cockpit Windows Services
   - Sm@rtLine Data Cockpit Database Schema Objects like tables, triggers and procedures

2. The LN explicitly recognizes that due to the necessary coordination of contracted system environment, the network system, the operating personnel and the SOFTWARE that an error-free use of the SOFTWARE cannot be guaranteed by AGU alone. AGU alerts to the fact that according to the state of technology it is impossible to generate computer software to work without fault in any application and combination.

3. The contract can only be concluded for all of the licensed modules of the SOFTWARE. Should the LN purchase further programs or program modules after the conclusion of the contract, this contract will be expanded to include said programs or program modules and the fee will be adjusted accordingly.

4. Support can only be guaranteed for the current version. Support is offered for previous versions for a maximum of one year after release of a newer version.

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§ 2 Fees

The yearly fees are 18% if the non-discounted license price plus sales tax. The fee is due yearly on the 2nd of January. For the first year, the fee will be calculated monthly for the remaining year (1/12 * x months). Exceptions to this are to be met separately in writing.

AGU reserves the right, at the latest 3 months before the end of the current contact year, to increase the fee for the following contract year for the LN through written notification.

If the CONTRACTING PARNTER does not, at this point, terminate the contract, then the new fee will be valid for the new contract year.

§ 3 Type of Support

The LN receives a right to support as per § 5 of this contract. This cannot be transferred to third parties. The LN can avail itself of the service by telephone or fax by using the numbers listed above, or in writing addressed to the address listed above. When doing so, the serial number is to be noted otherwise there is no right to support.

§ 4 Contract Period / Termination

This contract shall run for an indefinite period. It begins on the date entered above and is valid for the rest of the calendar year. Should the beginning date be after June 30th, the contract is valid at least until the end of the next calendar year. Afterwards the contract will be renewed automatically unless terminated 30 days before the end of the contract year in writing by one of the contracting parties.

§ 5 Services

AGU commits themselves to carrying out the following services as long as the contract is valid:

1. Support: (telephone consultation (hotline), written inquiries and information)
   AGU is available to the LN for information and support for the use of the SOFTWARE Monday thru Friday (excepting holidays and AGU bridging days) between 9:00 a.m. and 4 p.m. (CENTRAL EUROPEAN TIME) under the telephone number listed above. The LN should consult the online help and software manuals before contacting AGU. The support does not cover in any case components or software that were not included in the scope of delivery from AGU. Comprehensive questions are to be made by e-mail or fax and usually will be answered in writing.

2. Adaptations and improvements

2.1 Scope of adaptations and improvements
   AGU will provide the LN with adaptations or update versions free of charge as long as this contract is valid. The licensee receives delivery of the new version or will receive a password for an online download free of charge after providing the license number. AGU reserves the right to put significant functional updates of the SOFTWARE in a module that must be separately licensed.
   For certain adaptations it may be necessary to upgrade the (network's) operating system to the version required by AGU as well as reinstallation of operating system updates or database systems may be necessary. If no other agreement has been made, these measures will be performed by the CONTRACTING PARTNER.

2.2   Type of adaptations and improvements
AGU decides alone, whether and when (and in what form) a new version is necessary. The SOFTWARE will be made available either per data medium or as internet download. The LN is responsible and guarantees to secure their data before switching versions.

2.3   Correction of presumed errors

2.3.1   An error is a deviation from the description / specification / documentation of the respective last program version. If the CONTRACT PARTNER suspects an error in the SOFTWARE, they are to notify AGU in writing immediately and send the necessary documents as well as data and a detailed description of the error. AGU will analyze the documents and data and, according to their choice, will make the necessary corrections to the SOFTWARE and / or AGU will take other measures which they deem necessary in order to prevent the error in the SOFTWARE. AGU will, according to their choice, send the LN a corrected program version and / or a list of measures for the LN to carry out. AGU cannot, however, guarantee to eliminate or correct all errors.

2.3.2   AGU reserves the right to offer solutions to an error in the SOFTWARE only as part of a new version.

2.3.3   If AGU ascertains that the presumed error in the SOFTWARE is caused by entry errors, improper or unauthorized use of the SOFTWARE, the LN will be responsible for paying for the service effort of personnel and computers and all costs incurred in searching for the solution of the error.

2.3.4   AGU can demand that the LN gives proof of suspected errors. AGU is not obliged to provide troubleshooting for suspected errors.

2.3.5   AGU will notify the LN in writing about significant errors in the software found by AGU or third parties which could affect the CONTRACTING PARTNER.

2.4   Validity of new versions—inclusion in licensing contract.
The right of support for an older software version becomes void when AGU announces the readiness / delivery of a new version. Every new version is automatically subject to the licensing contract.

§ 6   Recovery of Licensed Programs
AGU will recover the SOFTWARE on data medium which was damaged due to operating errors, program or hardware errors. However, data or data medium belonging to the LN will not be recovered. The LN is responsible for storing current backups of their data.

§ 7   Refresher Training
AGU provides professional personnel for refresher training required by the LN which will be invoiced according to time and effort.

§ 8 Time and Place for the Rendering of Services

AGU endeavors to provide the services within a reasonable period. The LN makes remote access available free of charge. The services will be carried out in the offices of AGU during normal working hours (CENTRAL EUROPEAN TIME). Should it be necessary or desired for the work to be carried out on site at the CONTRACTING PARTNER, travel costs and allowances will be invoiced separately.

§ 9 Services not included in the scope of this contract

The following services are not included in this contract and therefore will only be carried out if agreed upon and paid for separately:

1.   The installation of the SOFTWARE

2.   The recovery of lost or insufficient data

3.   Services regarding the system software or such services which are necessary due to changes in the hardware or system software.

4.   The elimination of errors causes by the LN

5.   The handling of errors and problems not related to the licensed program (SOFTWARE), e.g. printer installation, network problems, etc.

6.   Loses and damages which are caused directly or indirectly by the CONTRACTING PARTNER's actions or omissions.

§ 10 Documents

The LN agrees to store all documents pertaining to the SOFTWARE carefully and to insure that its contents are safeguarded from unauthorized persons.

§ 11 Data Protection and Protection of Licensed Programs

The LN is to fulfill their obligations according to this contract and the license contract regarding the use, reproduction, modifications, protection and safety of the programs by implementing the appropriate measures with their employees and other persons allowed to work with the program. These obligations remain valid after the contract has been terminated.

§ 12 Guarantee
   In all other cases the conditions of the license contract apply!

1.   Scope of the guarantee
   AGU guarantees:

1.1   that AGU has the right and the technical capability to offer the services according to contract,

1.2   that the current program versions can be used and fulfill its functions which are listed in the license contract.

2.   Prerequisites of the guarantee

2.1   AGU does not guarantee that the current version is completely free of error. Should however an error be claimed in the current version as defined in point 1 within the **guarantee period of 6 months**, AGU will either exchange this version for an error free version or remove the errors, provided that:

* the program versions were always used properly and according to instructions
* the claimed error is reproducible by AGU
* the LN has updated the operating system (or rather operating system components and database systems) to the correct program versions as specified by AGU.
* the computer systems are updated to the technical standards as specified by AGU.
* the claimed error was reported to AGU within the guarantee period.

3. Notification of errors

   Every notification of an error is to be sent immediately in written form including the SOFTWARE and the program version in use as well as a description of the error and any additional information that would help with error diagnosis and elimination of the error. After receipt of such a notification AGU has the obligation to either test or control the SOFTWARE. The exchanged or debugged program version will be provided for the LN by AGU free of charge.

§ 13   Obligations of the CONTRACTING PARTNER

The LN is to:

1. follow the SOFTWARE manual (handbook) and all other instructions and must ensure that the SOFTWARE is only used by trained personnel;

2. store the SOFTWARE as specified in this contract;

3. ensure that all support work is carried out by AGU;

4. notify AGU immediately about malfunctions (errors) per telephone (with immediate written confirmation) or in writing (E-Mail). The LN must provide AGU with all documents (protocols from the system software, protocols from the user software, reports, etc.) and inform AGU completely as to the type of error and how it occurred;

5. provide AGU with the program data carrier and the data sets, information and documents which are necessary for the support;

6. make appropriate backup copies of all data regularly;

7. only install and use the SOFTWARE and new versions on the defined system environment.

§ 14   INDEMNIFICATION

AGU is not liable for damages in cases of minor negligence and in cases of gross negligence on the part of AGU, irrespective of the legal grounds of the liability, AGU shall be liable for a maximum of the 3 fold value of the contract fee for the program which caused the damage. Decisive is the valid fee at the time the claim is first made.

AGU is not liable to the LN for damages which occur together with or as a result of process results achieved with use of the SOFTWARE. The LN and its employees remain responsible for checking the date entries and the results provided by the SOFTWARE. The liability of AGU is limited as per the first sentence.

AGU is not liable for consequential damages, incidental damages, financial loss or loss of profit, anticipated saving that did not materialize, damages arising from the claims of third parties against the LN and not for the effort to restore lost data.

Claims for damages from AGU are excluded provided that no compelling legal liability exists due to premeditation or gross negligence. Liability for any consequential damage, regardless of type, is excluded.

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§ 15   CONFIDENTIALITY

AGU and the LN are to keep confidential all procedure results and business matters, processes, data and information, especially data and information pertaining to the LN which become known within the scope or their work and may not utilize these either directly or indirectly for themselves or a third party unless for purposes expressly to fulfill the responsibilities of this contract. The LN must prevent third parties from accessing the SOFTWARE within the scope of their possibilities.

§ 16   General Provisions

1. This agreement shall be governed by the laws of the Federal Republic of Germany, excluding the uniform law regarding the international purchase of movable objects and the uniform law regarding the conclusion of international sales contracts relating to movable objects.

2. Court of law for commercial/business transactions the exclusive legal venue for all disputes arising directly or indirectly out of the contract, including actions relating to bills of exchange or checks, shall be Leverkusen, Germany. AGU also entitled to bring suit against the CONTRACTING PARTY at the latter's head office location.

3. No subsidiary agreements have been concluded. Changes to this contract must be made in writing. This shall also apply to the reversal or amendment of this written clause.

4. If any provision hereof should be invalid, ineffective or contestable, this shall not affect the validity of the remaining provisions. The ineffective or unenforceable provision shall be considered to be replaced by that effective and/or enforceable provision which is as close as possible to the economic purpose pursued by the parties with the ineffective or unenforceable provision.