

# Specific Terms and Conditions for Software Maintenance

RA Consulting GmbH, Zeiloch 6a, 76646 Bruchsal, Germany

## §1 Scope of Application

- §1.1 RA Consulting shall render maintenance services only for such software for which Client has concluded an Agreement on the Provision of Software with RA Consulting. In this case, the Specific Terms and Conditions on the Provision of Software shall apply, and in a supplementary manner, the General Terms and Conditions (GTC). Unless otherwise provided in the Agreement on the Provision of Software, the Software Maintenance shall commence upon delivery (Purchase Agreement) or acceptance (Contract for Service) of the software, respectively.
- §1.2 RA Consulting shall perform maintenance services for the most recent, unmodified software versions of the standardized software created or supplied and released by RA Consulting and for previous versions only.
- §1.3 Maintenance shall not cover hardware, or a migration to other hardware or another operating system. Client shall register the hardware upon which the software is executed at the beginning of the Maintenance Agreement and shall notify RA Consulting within 30 days of any replacement or upgrade of the registered hardware. In connection herewith, hardware-specific information on certain computer components will be gathered by the software and stored for registration purposes.

## §2 Scope of Services

§2.1 RA Consulting shall perform maintenance services for Client which shall include:

a) Fault analysis

Client shall notify RA Consulting of any suspected or evidenced errors in the software covered by Software Maintenance by giving a written notice pursuant to § 6 par. 2 of the GTC. Upon receipt of the error report, RA Consulting shall confirm receipt of such notice no later than within 3 working days – subject, however, to the regular service hours of the maintenance desk (§ 2 par. 2) – and start the fault analysis. RA Consulting shall analyze those components of the system that are affected by the error or fault and shall provide information as to whether the fault is attributable to a hardware or software defect.

b) Removal of defects

In the event that the fault analysis shows that software subject to Software Maintenance contains a defect, Client will be given information on the removal of the defect and/or advice on how to



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work around the defect. The error will normally be removed by providing a new program version.

The defects will be categorized as follows:

- category 1 (error preventing operation; the software cannot be used);
- category 2 (error impairing operation; software use is impaired, but essentially the software may be used). There is a workaround for errors using organizational and other aids that are reasonable from a cost/benefit perspective);
- category 3 (other error; no significant impact on functionality or usability).

RA Consulting shall start the removal of the defect during Software Maintenance service hours upon receipt of a written notice in accordance with the following provisions:

- in the case of errors pertaining to category 1, RA Consulting shall start the removal of the defect within one (1) working day.
- in the case of errors pertaining to category 2, RA Consulting shall start the removal of the defect within five (5) working days.
- in the case of errors pertaining to category 3, RA Consulting shall start the removal of the defect at its convenience or with the subsequent update.

In the event that an error report is made outside the Software Maintenance service hours (§ 2 par. 2), the time period for the removal of the defect shall begin to run at the start of the following working day.

c) Shipment of Updates

RA Consulting shall make available to Client the most recent program versions. This provision shall not apply to new functionalities of its supplies and/or services and to new program modules (upgrades). Client shall receive the latest program releases in machine-readable code, and, to the extent required, together with user manual supplements.

§2.2 RA Consulting shall perform maintenance services on working days, Monday through Friday, between 8 a.m. and 5 p.m. C.E.T. (except statutory holidays in Baden-Wuerttemberg, Germany, and at the site where the software is used, plus on December 24 and 31 of each year; "Software Maintenance service hours"). Maintenance services shall always be performed by making new releases available via remote maintenance (remote access).



§2.3 The following services are not included in the maintenance services:

- Client-specific changes and extensions of the software (change requests) and shipment of upgrades with extensions and modifications of programs and functionality;
- maintenance services for third-party software and Open Source software;
- installation, implementation, and parameterization (customizing) of the software in the hardware environment of Client;
- Removal of errors and faults that are due to operation errors, other improper treatment, technical changes on the part of Client or third parties, and to any other external influences for which RA Consulting is not responsible;
- Change of hardware or operating system;
- instruction and training of personnel;
- software maintenance at Client's site;
- creation of and changes to application program, query forms, etc.;
- organizational measures;
- data restoration and security measures;
- maintenance of RA Consulting software that is not used in the specified conditions of use or that was modified through unauthorized programming work.

If such services are provided by RA Consulting anyway upon request by Client, they shall be invoiced on a time and materials basis and in accordance with the RA Consulting price list that is valid at that time.

§2.4 RA Consulting may also commission third parties with the rendering of maintenance services in order to ensure contract performance.

### §3 Client's Duty to Co-Operate

§3.1 Client shall co-operate in the provision of maintenance services as set forth in § 3 of the GTC.

§3.2 To the extent that Client can be reasonably expected to do so, Client shall take all necessary measures to determine, delimit, and document defects. This includes the preparation of a written error report with an exact description of the fault and its consequences. Client shall make available to RA Consulting system logs, memory dumps, input/output data affected, interim and



test results, and other records that may serve to describe the defect. Client shall monitor its own network for computer viruses, Trojan Horses, and other circumstances that may adversely affect the system security.

§3.3 Upon execution of the Agreement, Client shall inform RA Consulting in writing of a system administrator who is the business contact for RA Consulting and of his/her deputy. The business contact and his/her deputy must be employees of Client. Client shall immediately notify RA Consulting in writing of any change in the identity of the business contact or the deputy.

## §4 Compensation

§4.1 RA Consulting will receive the annual compensation indicated in the quotation submitted by RA Consulting for Software Maintenance rendered in accordance with § 2. The amount of compensation shall be a percentage of the volume of the contract on supplies and/or services. The compensation for any one calendar quarter shall be invoiced in advance and shall be payable without any deduction within 14 days after receipt of the invoice.

§4.2 Maintenance services to be performed outside the Software Maintenance service hours and services to be rendered at Client's site will be performed upon written request from Client and charged on a time and materials basis, including travel time, travel expenses, and lodging, if applicable.

§4.3 If it should become apparent during the error removal process that the fault or error was not caused by circumstances attributable to the RA Consulting software, RA Consulting may also invoice such services rendered as a separate invoice item.

§4.4 RA Consulting may adjust the maintenance fee by giving eight (8) weeks written notice effective no earlier than at the end of the calendar year and in accordance with the overall price trend. If the increase of the maintenance fee exceeds 7.5 %, Client may terminate the Maintenance Agreement by giving four (4) weeks written notice prior to the date the increase takes effect.

## §5 Grant of Rights

§5.1 RA Consulting grants Client the right to use the work results of the maintenance services and the new program releases in accordance with the terms and conditions under which the software has been provided (§ 3 of the Specific Terms and Conditions for the Provision of Software). Any further reaching rights are excluded.

§5.2 Upon installation of a new program release, the right to use the previous release shall expire.



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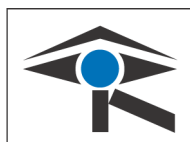
## §6 Term and Termination

§6.1 This Agreement is made for a term of one (1) year.

§6.2 The parties reserve the right to terminate the Agreement for cause. Cause shall exist, in particular, if and when:

- Client is in default with the payment of the compensation for one (1) month in such an amount that equals the pro-rated compensation for any two (2) months;
- Client is in default with the payment of the compensation for two (2) month in such an amount that ties up to the pro-rated compensation for one (1) month;
- proceedings are initiated under any applicable insolvency act, or are rejected for a lack of funds;
- claims of the other party are seized or attached, and this attachment or seizure is not removed within two (2) weeks;
- either party materially violates its contractual obligations and does not refrain from this conduct after a time period has been established in writing, at the expiration of which the non-defaulting party threatens to refuse acceptance; provided, however, that no such grace period is required in case of imminent danger.

The notice of termination must be in writing. Prior to a termination, the non-defaulting party shall give written notice to the defaulting party by stating the nature of the breach and threatening to terminate the Agreement, and establishing a period of time within which the defaulting party must cure its breach, unless the non-defaulting party cannot be reasonably expected to accept this delay.



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