

Mensch und Maschine (MuM) Software Service Contract for Support and Maintenance Services

1. Scope

1.1 This contract ("**MuM Software Service Contract**") governs the maintenance and support services performed by MuM with respect to the subscription-based software licences of the Service User (hereafter, the "**Contract Products**") for entrepreneurs within the meaning of Section (§) 14 of the German Civil Code [BGB]. Under this legal provision, an entrepreneur is a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in preparation for or exercise of his or its trade, business or profession. The Contract Products are licensed exclusively on the basis of the specific end-user licence terms as separately agreed for a Contract Product (the "**Software Licences**"). Unless otherwise agreed under the relevant licence terms for the Contract Products or specific Contract Products, the Software Licences are subject to payment of the applicable fees. Other Software Licences under the relevant product family may be added at any time on the currently applicable terms. All Software Licences of the Service User under a product family, which are covered by a MuM Software Service Contract with Support Package, become an integral part of this Contract.

2. Scope of services

2.1 MuM Software Service Contract (Standard)

The MuM Software Service Contract covers the products Support Package, Maintenance Package, ABO, ABOplus or MaintenancePlus, as specified in the purchase agreement.

2.1.1 Support Package

The "**Support Package**" provides support to the Service User and its regular employees in resolving specific issues related to the use and application of the Contract Products. Support is provided for the most current version and the two immediately preceding versions of the Contract Product. General explanations of the functionality of the Contract Products or training in specific program processes are not part of the services due under the Support Package.

Specifically, MuM undertakes to provide the following services under the Support Package:

- telephone support through the MuM hotline service during the hotline hours of Mon to Fri 9:00 to 12:00 h and 13:00 to 17:00 h (Fri 16:00 h)
- e-mail support with express response from our experienced hotline team. MuM guarantees a response time within no more than 4 hours during hotline hours.
- online remote maintenance: The Service User can provide our support engineer with access to its computer to provide solutions in real time.
- access to the Download section and additional option of uploading your files as and when necessary to resolve your issue.

Unless expressly otherwise agreed, the Support Package is active from conclusion of the contract.

2.1.2 Maintenance Package or the ABO

The "**Maintenance Package**" as well as the "ABO" [subscription] include the periodic provision of new versions (updates), service packs and hotfix packs related to the Contract Products. Specifically, this means:

- "MuM Update Service" of the MuM Contract Products and of related MuM companies ("MuM Software") according to the terms set out under this Contract and the service specification provided in the proposal, insofar as the Maintenance Package or the ABO of the MuM Software was agreed.
- "Autodesk Subscription (previously, Desktop Subscription) / Autodesk Maintenance Contract (Maintenance Subscription)" of the Contract Products of Autodesk GmbH, registered in Munich, and of related Autodesk companies ("Autodesk Software") on the applicable terms published on the Subscription page of Autodesk GmbH on the Internet (www.autodesk.de/subscription).
- "Accruent Subscription" of the Contract Products of Accruent International I BV, registered at Polarisavenue 1, 2132 JH Hoofddorp, Netherlands, ("Accruent Software") on the terms published by Accruent International I BV.
- Both the "Maintenance Package" and the "ABO" provide the Service User with access to the relevant subscription services of MuM, Autodesk GmbH and Accruent International I BV for the relevant Contract Products, including without limitation the supply of any service packs, software updates and upgrades released during the year.

The Autodesk Subscription / Autodesk Maintenance Contract and the Accruent Subscription are available through MuM as part of the Maintenance Package or the ABO. MuM will order these products from Autodesk GmbH and/or Accruent International I BV on behalf of the Service User; the Service User hereby authorises MuM for the term of the Maintenance Package or the ABO to represent the Service User in dealings with Autodesk GmbH and/or Accruent International I BV with respect to the Autodesk Software and/or the Accruent Software and the Autodesk Subscription / Autodesk Maintenance Contract and/or the Accruent Subscription. The contractual relationship for the Autodesk Subscription / Autodesk Maintenance Contract will be formed exclusively between Autodesk GmbH and the Service User on the applicable terms published on the Subscription page of Autodesk on the Internet (www.autodesk.de/subscription); the contractual relationship for the Accruent Subscription will be formed exclusively between Accruent International I BV and the Service User on the applicable terms published at the time.

- The Autodesk Subscription / Autodesk Maintenance Contract commences with the order of the Maintenance Package or the ABO for Autodesk Software upon registration of the Service User in the subscription system of Autodesk GmbH and the Accruent Subscription commences with the order of the Maintenance Package or the ABO for Accruent Software upon registration of the Service User in the subscription system of Accruent International I BV by MuM. Subscriptions and maintenance contracts for Contract Products can be added to this MuM Software Service Contract subsequently.

The Service User hereby instructs and authorises MuM for the duration of the Maintenance Package or the ABO to agree, on behalf of the Service User, to the annual renewal of the Autodesk Subscription / Autodesk Maintenance Contract or the Accruent Subscription vis-à-vis Autodesk GmbH and Accruent International I BV.

2.1.3 ABOplus

"**ABOplus**" comprises the Support Package and the ABO of MuM. See Support Package and ABO for details of the services included in ABOplus.

2.1.4 MaintenancePlus

"**MaintenancePlus**" comprises the Support Package and the Maintenance Package of MuM. See Support and Maintenance Packages for details of the services included in MaintenancePlus.

2.2 Services not covered by this Contract:

Except as otherwise agreed in each case, the Support Services provided under the MuM Software Service Contract expressly exclude (without limitation):

- Adaptation of the Contract Products to versions used by other users or sold by MuM.
- Adaptation of the Contract Products to changes in the hardware or software environment, including adaptation to operating system changes.
- Adaptation of the Contract Products to statutory or mandatory requirements.
- Resolution of defects attributable to the Service User or a third party, including process failure due to third-party software.
- Installation of the supplied Contract Products.
- General instruction and training of Contract Product users.

3. Service User obligations, disclaimer

- 3.1 MuM has no obligation to resolve problems and defects relating to misapplication or misuse of the Contract Products by the Service User, modifications made by the Service User or a third party to the program code of the Contract Products, force majeure, or the interaction or use of the Contract Products in or with any software not specified in this Contract. These services may, however, be agreed in each case for an additional fee. The same applies to the resolution of problems or defects caused by power failures, defective hardware or other factors beyond the reasonable control of MuM.
- 3.2 The Service User will provide MuM with all such cooperation and assistance as is reasonably required to enable a smooth and timely hotline service response. In particular, the Service User will describe, pinpoint, identify and report the incidents in reasonable detail, and document all incidents, so as to enable an analysis by the MuM hotline service. The Service User will allow the hotline team sufficient time for a diagnostic assessment of and assistance with any software problems.
- 3.3 The Service User will no longer receive support services for Contract Products which are discontinued altogether by Autodesk GmbH, Accruent ECM Solutions B.V or MuM. In such case, both MuM and the Service User may request the removal of these Contract Products from the Support Package for the future.
- 3.4 The Service User confirms that it has acquired the rights to use the Contract Products as part of a valid licence agreement. If MuM is unable, as a result of the Service User's failure to acquire such rights, to provide the services due under this Software Service Contract, or cannot do so without infringing third-party rights, MuM shall remain entitled to payment of the fees. MuM needs, however, only take into account the expenses it acquires or wilfully fails to acquire from other use of its labour.

4. Payment

- 4.1 The fees charged to the Service User for the services provided under this MuM Software Service Contract ("**Software Service Fees**") are due annually in advance within 8 days of invoicing, plus statutory VAT as stated separately in the invoice, and are payable by the Service User to MuM.
- 4.2 MuM reserves the right to adjust all or part of the Software Service Fees from time to time, but not before the expiry of a contract year, as may be appropriate and reasonable to account for its increased cost and the general market development. MuM will give the Service User written advance notice of the planned adjustment of Software Service Fees in due time. The Service User's failure to object within one month from receipt of the notification of adjustment or to give due notice of termination of the Software Service Contract shall constitute acceptance of the adjustment. In case of a termination by the Service User, the Contract will continue as is, without change, until the expiry of its term.

In the same manner, the Contract will continue as is, without change, if the Service User objects; in such case, however, MuM will have a special right, within one month from receipt of the objection, to terminate the Software Service Contract or individual packages thereof by giving one month's notice. In its notification of changes, MuM will inform the Service User of its options to object and to terminate the Contract, the deadline and the legal consequences, particularly the consequences of failure to object.

- 4.3 MuM has the right to transfer this Software Service Contract or any part thereof to a third party by giving one month's advance notice. The third party will subsequently enter into all rights and obligations of MuM. In such case, the Service User is entitled, within one month from receipt of the advance notice, to terminate the contractual relationship with MuM or any part thereof without giving a reason.
- 4.4 The Service User has the right to set off only those counterclaims that have been upheld as final by a court of law, are undisputed or have been acknowledged by MuM. The Service User may assert a right of retention only where counterclaims arise under the same contractual relationship.

5. Liability of MuM

- 5.1 With the exception of claims for defect, MuM shall only accept full liability, on whatever legal grounds, for damages which are due to grossly negligent or wilful acts by its legal representatives, executives or vicarious agents, or which fall within the scope of an express (i.e. using the term "warranty") unlimited warranty or assurance given by MuM for this case.
- 5.2 Furthermore, MuM is liable for damages resulting from the culpable breach of any material contractual obligation the fulfilment of which is essential to the proper execution of this Software Service Contract and which provides for the avoidance of the realised loss. In such cases, however, the liability is limited in each case and in the aggregate to typical and foreseeable damages under the contract and to the amount of the Software Service Fee agreed for one contract year. Claims for loss of profit, compensation for wasted expenditure, claims for damages by third parties, as well as other indirect and consequential damages, however, are excluded in these cases.
- 5.3 Contributory negligence, a violation of the duty to mitigate damages, benefit sharing (including claims for insurance benefits) or omission of collaborative action under the contract on the part of the Service User will be taken into account. In particular, MuM will not be liable for the loss of data and its recovery if the Service User has failed to implement security measures. Moreover, liability for loss of data is limited to the typical recovery effort that would have occurred with regular and riskappropriate production of backup files.
- 5.4 Claims for damages against MuM become time-barred 12 months after the end of the year in which the claim arose and the Service User became aware of the circumstances on which the claims are based and the identity of the party responsible for the damage, or should have become aware without gross negligence on its part.
- 5.5 The above limitations on liability do not apply to wilful or fraudulent conduct, to product liability claims and to damages arising from injury to life, limb or health.
- 5.6 To the extent that MuM's liability is limited or excluded, the same shall apply to any liability of its legal representatives, employees and vicarious agents.
- 5.7 In the event that a specific performance violates any third party's intellectual property rights, MuM is entitled – notwithstanding any other claims for damages – to make modifications at its sole discretion and expense and by prior arrangement with the Service User - in consideration of the interests of the Service User – to ensure that said performance no longer violates the third party's intellectual property rights, or to procure for the Service User the necessary rights of use.
- 5.8 The General Terms and Conditions (T&C) of MuM apply in addition to claims for defects.

6. Contract term

- 6.1 This MuM Software Service Contract is established upon placement of the relevant legally-binding purchase order by the Service User. Unless otherwise expressly agreed in writing, the performance obligations of MuM commence at the earliest from receipt of the Software Service Fee payable to MuM for the first contract year.
- 6.2 If a MuM Software Service Contract is added to an existing Autodesk Subscription / Autodesk Maintenance Contract or an Accruent or MuM Subscription, the end date of the existing Subscription will be adjusted. The fees will be prorated.
- 6.3 The MuM Software Service Contract is concluded for an indefinite period. It may be terminated by either party giving three months' due notice effective at the end of the contract term, but not before the expiry of a minimum contract term of 12 months from signing the contract. The same notice period applies to partial termination of specific packages or of specific Contract Products.
- 6.4 This does not affect the right of either party to terminate the contract without notice for good cause. Good cause for termination, regardless of any fault on the part of MuM, includes without limitation if Autodesk or Accruent discontinues the development or support of Contract Products or the Service User fails to pay to MuM the Software Service Fees due, despite a reminder giving a grace period of not less than two weeks. MuM's obligations to perform any services under this Contract for which the Software Service Fees are outstanding will be suspended until MuM has received full payment of the outstanding Software Service Fees.
- 6.5 Any notice of termination shall be required in writing.

7. Reservation of title and rights

- 7.1 Title to hardware and software as well as data media (hereafter, "Goods") will not pass to the Customer until MuM has received full payment of the Software Service Fees due for the subscription period in which the Goods were supplied. For ongoing business relations with the Service User, MuM must, instead, have received all monies owed to MuM under the business relationship. Unless and until full payment has been received by MuM of the due Software Service Fees or – in the case of an ongoing business relationship – of all monies owed to MuM under the business relationship, the Service User is not entitled to dispose of the Goods supplied by MuM.
- 7.2 All rights, title and interest of MuM, including ownership, copyrights, usage and exploitation rights, in and to work results and software, contents, concepts, analyses, drawings, designs, images and documents vest in and are owned absolutely by MuM in relation to the Service User. Nothing in this Software Service Contract nor any services provided by MuM hereunder shall be construed as granting to or conferring on the Service User any rights or licence to the software, Contract Products or other protected works or rights. The Contract Products and the software, including hot fixes, updates, upgrades, add-ons, etc., are made available and licensed exclusively on the basis of the relevant licence agreements on the use of specific software/end-user licence agreements for the Contract Products.

8. Privacy

MuM collects, stores, processes and uses personal information of the Service User in a machine-readable format. MuM does so in a lawful manner in compliance with all applicable laws concerning the protection of such information (German data protection laws, European data protection regulations, and any other applicable data protection laws). MuM uses this information to provide the Service User with the contractual services, to develop its customer relationship, and to offer the Service User other products and services from MuM or a third party. The Service User has the right at any time to obtain information about the personal data stored by MuM and to request correction, erasure or restriction of processing of the stored data. For additional assistance please e-mail our support at support@mum.de.

9. General terms

- 9.1 No changes and/or amendments to this Contract will be binding on either party unless set forth and confirmed in writing by MuM.
- 9.2 The Standard Terms and Conditions of MuM as amended from time to time apply in addition to these terms.
- 9.3 Standard terms and conditions of the Service User shall not apply to this Software Service Contract, even if MuM does not expressly repeat its objection to their validity.
- 9.4 Insofar as the Service User is a merchant, a legal entity under public law or a special fund under public law or if the Service User has no general place of jurisdiction in the Federal Republic of Germany or moves its residence or usual domicile abroad after conclusion of the Contract or it's residence or usual domicile is unknown at the time of institution of legal proceedings, the place of performance and jurisdiction will be the registered office of the company of the Mensch und Maschine group which is a party to the Contract concerned.
- 9.5 This Software Service Contract shall be governed by German law to the exclusion of the rules, principles and conventions of international private law and the UN Convention on Contracts for the International Sale of Goods.
- 9.6 Should any individual provision of this Software Service Contract be or become illegal, void or unenforceable, the validity of the remaining provisions hereof shall in no way be affected.