

Maintenance and Support Agreement

§ 1 Scope of this Agreement

Licensor has agreed with Licensee to maintain the software („Licensed Product“) set out in **schedule 1** and to support Licensee in its use of the Licensed Product subject to the conditions of this Software Maintenance and Support Agreement („Agreement“).

§ 2 Scope of Services

- (1) Licensor shall provide the following services („1st, 2nd and 3rd level support“) subject to the terms of this Agreement:
consultancy and support services in connection with the functions of the Licensed Product; dealing with errors which occur during the proper use of the Licensed Product or which become apparent in the respective documentation; delivery of updates and/or upgrades of the Licensed Product.
- (2) Customer Support also covers the documentation which accompanies the Licensed Product.
- (3) The services also include dealing with errors or other defects in the Licensed Product, which become known to Licensor independent of its use by Licensee. Existing Licensee's rights in case of defects shall remain unaffected.
- (4) Dealing with errors for the purposes of this Agreement comprises narrowing down the causes of the error, error diagnostics as well as services directed towards correcting the error (particularly patches and service packs). Services for dealing with errors may, at the option of Licensor, also be provided through workarounds, delivery of updates or upgrades or, upon prior consultation with Licensee, through delivery of a new version.
- (5) To the extent that under this Agreement Licensor supplies computer programs or other works capable of independent copyright protection, such computer programs as well as the rights to use them granted to Licensee shall be governed by the software license agreement for the maintained software.
- (6) The details of the extent of services are set out in schedule 2 to this Agreement as well as from any further agreement for the provision of 1st level support by a distributor of the licensor or other third parties.
- (7) Only the Licensed Product which is installed at the installation locations which have been notified by Customer to Licensor in text is covered by Customer Support. Any changes to the installation location must be notified to Licensor in text. Licensor may only refuse Customer Support for the Licensed Product installed at a new installation location for good cause. Additional costs for the provision of the services under this Agreement which are incurred through the change of installation location shall be borne by Licensee.
- (8) Customer Support does not include:
 - services outside the agreed times of support availability;
 - services for the Licensed Product, which is not used in accordance with the conditions of use set out by Licensor;
 - services for the Licensed Product, which has been changed by programming not carried out by Licensor;
 - services for computer programs or parts thereof, which do not form part of the Licensed Product;
 - services for the Licensed Product, where updates or other measures to correct the error, provided by Licensor have not been installed and where the error would have been cured by such updates or bug fixes, unless the installation thereof is unreasonable for the Licensee for which it is not responsible;
 - services for the Licensed Product for a release version that is no longer generally supported by Licensor;
 - services that could be performed on Licensor's site, however, which upon Licensee's request were performed elsewhere; and
 - services that become necessary due to Licensee's failure to cooperate.

§ 3 Customer Support Availability

- (1) Customer Support shall be provided during the times as set out in schedule 3. All times of support availability refer to the time zone at Licensor's registered offices. Reaction and processing times are extended by the time difference between the different time zones of the licensor and the licensee or the service provider for the provision of the 1st level support.
- (2) The reaction times of Licensor set out in schedule 2 shall apply according to the agreed service level upon receipt of a sufficiently specific error description, including malfunction, affected product components, and yet undertaken steps. Reaction time shall mean the period, within which Licensor commences its work. Outside the times of support availability agreed in schedule 3 the reaction time shall be suspend. If schedules 2 and 3 are not specified, service hours are from Monday to Friday from 8:00 to 17:00 and the response time is 48 hours.

§ 4 Cooperation and Duties of the Parties

- (1) The parties agree that they shall cooperate with each other closely and efficiently, whereby the personnel, organizational, expert and technical responsibility of Licensee shall also be important, in particular
 - to supply proper notes, documentation and information necessary for the provision of the services, in particular concerning available facilities, equipment, computer programs and parts of computer programs, which are intended to function with the services to be provided;
 - to make available the necessary working offices and materials;
 - to make available test plans and test data as well as to prepare and make available the test environment;
 - to document and inform Licensor without delay of errors determined in the course of the test or production running of the services provided in a form that can be reproduced, in any event which is comprehensible;
 - to make available at its own cost all facilities, equipment and suitably qualified personnel for the cooperation, to the extent necessary for the provision of the services; and;
 - to fulfil the (cooperation) obligations on time, to carry out the (cooperation) activities on time and to give declarations in accordance with the time limits.
- (2) Licensee shall nominate at least one employee employed at the installation location of the Licensed Product to Licensor as its contact partner. Licensee undertakes to notify to Licensor any changes to the contact partners without undue delay. The contact partner must have experience in the use of the Licensed Product. Only the contact partner is entitled to register errors with Licensor.
- (3) Licensee shall carry out an analysis of the system environment as far as possible before registering an error, in order to ensure that the error is not caused by system components which are not the subject of this Agreement.
- (4) Licensee undertakes to install the updates, or other measures to correct the error, provided by Licensor without undue delay.
- (5) Licensee undertakes to maintain a continuing system management of the system environment in which the Licensed Product runs and to continue the support and maintenance of Licensee's system environment (hardware and software) (Licensee should conclude and maintain appropriate support and maintenance contracts for this);
- (6) It is Licensee's obligation to regularly backup its data with the due care of a prudent businessman. Licensee shall, in particular prior to any installation and/or access by Licensor or third parties mandated by Licensor to its system, take a complete data security backup of all system and application data. The data backup is to be stored in such a way that the recovery of the secured data is possible at any time.
- (7) Licensee must ensure that Licensor is given the right to use the systems of third parties, to the extent that this is necessary in order to provide the services owed hereunder.
- (8) If Licensee fails to perform the activities for which it is responsible, then the obligations of Licensor which cannot be rendered without such activity or only by incurring disproportionate additional expenses, shall be suspended for the duration of such default. Additional expenses caused thereby shall be reimbursed by Licensee to Licensor in addition to the agreed fees on

the basis of the then current rates per man working day/hourly rates. This shall not affect any legal rights of Licensor to terminate this Agreement.

§ 5 Fees

- (1) The annual fee owed by Licensee to Licensor for the services hereunder is set forth in **schedule 4**.
- (2) Services outside the agreed extent of Customer Support or subject matter of this Agreement shall be paid for by Licensee separately. Licensor's or the commercial agent's then applicable hourly / daily rates according to **schedule 4** shall apply for this purpose.
- (3) Licensor reserves the right to change the fee following written notification giving six weeks' notice to the end of any contractual year. Each such change may increase fees by not more than 3 percent over the preceding twelve month period. To the extent there is an increase of the fees by more than 3 percent of the fees for the preceding twelve month period, Licensee may give six weeks' written notice to terminate the Agreement as of the effective date of the increase.
- (4) Where Licensor receives payment on the basis of time spent, Licensee is under an obligation to sign off the presented time sheets to show its agreement without delay, however at the latest within three days of receipt. To the extent Licensee does not agree with the presented time sheets, it shall detail any objections to the time sheets in writing within this period. The parties shall then attempt to clarify the situation without delay, whereupon the time sheets shall be signed off by Licensee without delay.
- (5) Licensor will invoice the fees to Licensee in accordance with the payment schedule set forth in Schedule 1. Invoices are payable without deduction within 10 days of the date of the invoice. If Licensee is in default of payment, the outstanding amount shall bear interest at the rate of eight percent over the then current basic rate of interest. This shall not affect any more extensive rights.
- (6) All amounts stated in Schedule 1 are excluding any applicable Value Added Tax, unless explicitly stated otherwise. The current rate of statutory Value Added Tax shall be invoiced and paid in addition to all fees. Licensor shall state the rate and amount of Value Added Tax separately on the invoice.

§ 6 Rights in case of Defects of Updates, Upgrades and New Releases

- (1) Under this Agreement to the extent updates, upgrades, new releases or other purchased items are delivered to Licensee or work is performed for Licensee, the rights in case of defects in respect of the new features implemented therein, which do not merely remove errors, is set forth in the following para. (2) to (9).
- (2) The software provided by Licensor shall be substantially in accordance with the product description of the renewed version. Rights in case of defects shall be excluded in the case of minor or immaterial deviations from the agreed or assumed characteristics and in the case of just slight impairment of use. Product descriptions shall not be deemed guaranteed unless separately agreed in writing.
- (3) If Licensee demands replacement performance because of a defect, Licensor has the right to choose between the improvement, replacement delivery or replacement of services. If the defect is not cured within a first time limit and Licensee has set Licensor a reasonable second time limit without success or if a reasonable number of attempts to remedy, replacement deliveries or replacement services are unsuccessful, then Licensee may, subject to the statutory prerequisites, terminate this Agreement or reduce the price and claim damages or reimbursement of costs. The remedying of the defect may also take place through the delivery or installation of a new program version or a work-around. If the defect does not or not substantially impair the functionality, then Licensor is entitled, to the exclusion of further rights in case of defects, to remedy the defect by delivering a new version or an update as part of its version, update and upgrade planning.
- (4) Defects must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error. This shall not affect the statutory obligation of Licensee to inspect and notify defects.

- (5) Licensee's rights in case of defects are limited to 12 months and the period shall begin on the date of delivery of the update, upgrade or new release.
- (6) Any claims for damages in respect of defective services are subject to the limitations set forth under § 8.
- (7) If the defect is caused by the defective products of a supplier and the supplier does not act as an assistant in performance of Licensor, rather Licensor is merely passing on a third party product to Licensee, then Licensee's rights in case of defects shall be limited to the assignment of its rights in case of defects against the supplier. This shall not apply, when the defect is caused by improper handling of the supplier's product for which Licensor is responsible. If Licensee is unable to assert his rights in case of defects against the supplier out of court, Licensor's subsidiary liability for Licensee's rights in case of defects shall remain unaffected.
- (8) Amendments or additions to the updates, upgrades or new releases delivered which Licensee carries out itself or through third parties, shall cause Licensee's rights in case of defects to be cancelled, unless Licensee proves that the amendment or addition did not cause the defect. Licensor shall also not be responsible for defects, which are caused by improper use or improper operation or the use of unsuitable means of operation by Licensee.
- (9) Licensor may refuse to remedy defects or deliver replacements, if and while Licensee is in default of payment with an amount not less than two monthly installments.

§ 7 Rights in Case of Defects in Title of Updates, Upgrades and New Releases

- (1) If under this Agreement updates, upgrades, new releases or other objects of purchase or work are delivered or performed to Licensee, Licensee's rights in case of defects in title in respect of the new features implemented, which do not merely remove errors, are set forth by the following para. 2 to 6.
- (2) The software delivered or provided by Licensor shall be free from third party rights, which prevent the use in accordance with the contract. Excepted from this are customary retentions of title.
- (3) If third parties are entitled to such rights and they pursue these, then Licensor shall do everything in its power, in order to defend the software at its own expense against the third party rights claimed. Licensee shall inform Licensor in writing without delay of the claiming of such rights by third parties and shall give Licensor all powers of attorney and authorizations which are necessary in order to defend the software against the third party rights claimed.
- (4) To the extent that there are defects in title, Licensor is (a) entitled at its option to either (i) take legitimate measures to remove the third party rights, which impair the contractual use of the software, or (ii) remedy the enforcement of such claims, or (iii) change or replace the hardware and software in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software, and (b) under an obligation to reimburse Licensee for its necessary refundable costs incurred in the enforcement of legal claims.
- (5) If a release under para. (3) is not possible within a reasonable time limit, then Licensee may, subject to the statutory prerequisites, at its option terminate this Agreement or reduce the price and claim damages.
- (6) In all other respects § 6 para. (5), (7) and (10) shall apply accordingly.

§ 8 Liability, Damages

- (1) Licensor shall be liable for losses under the terms of this Agreement only in accordance with the provisions set out under (a) to (e):
 - (a) Licensor shall be unrestricted liable for losses caused intentionally or with gross negligence by Licensor, its legal representatives or senior executives and for losses caused intentionally by other assistants in performance; in respect of gross negligence of other assistants in performance Licensor's liability shall be as set forth by the provisions for simple negligence in (e) below.
 - (b) Licensor shall be unrestricted liable for death, personal injury or damage to health caused by the intent or negligence of Licensor, its legal representatives or assistants in performance.

- (c) Licensor shall be liable for losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for Licensor at the time the warranty was given.
 - (d) Licensor shall be liable in accordance with the Product Liability Act in the event of product liability.
 - (e) Licensor shall be liable for losses caused by the breach of its primary obligations by Licensor, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which Licensee may rely. If Licensor breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by Licensor at the time the respective service was performed.
- (2) Licensor shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.
 - (3) Any more extensive liability of Licensor is excluded on the merits.

§ 9 Duty of Confidentiality, Data Protection

- (1) The parties agree to keep all confidential information which becomes known to them during the performance of this Agreement strictly confidential and only to use such information for the contractually agreed purposes. Confidential information for the purpose of this provision shall mean information, documents, details and data, which is marked as such or is to be seen as confidential because of its nature.
Licensor agrees to allow only such of its employees, who are entrusted with the provision of services in the course of this contract, access to the confidential information of Licensee. Both parties agree at the request of the other party to require their employees to sign an appropriate confidentiality declaration and to present this to the other party. The parties shall not seek to register intellectual property rights in respect of confidential information of the other party.
- (2) If confidential information within the above definition is requested by a public authority, then the other party shall be informed without delay and before the information is supplied to the public authority.
- (3) The rights and obligations under (1) and (2) shall not be affected by the termination of this Agreement. Both parties agree at the option of the other party to return or destroy the confidential information of the other party upon the termination of this Agreement, to the extent that such information still exists.
- (4) The Licensee is obliged to inform data subjects about the data processing by the company prior to the transfer of personal data and to comply with their own country-specific data protection regulations.

§ 10 Term of the Agreement

- (1) This Agreement shall take effect as with delivery of the license keys.
- (2) The agreement has a term according to the license form. Before expiry the respective contract period, the Licensor or the distributor will submit an extension offer. If the licensee does not accept this extension offer until the end of the respective contract period, the maintenance contract ends without the need for termination.
- (3) The right of termination for cause shall remain unaffected.
- (4) Terminations notices must be given in writing.

§ 11 Final Provisions

- (1) Licensor has the right to engage subcontractors to provide the services under this Agreement.
- (2) Amendments or additions to this Agreement must be made in writing to be effective. This shall also apply to amendments of this written form requirement.
- (3) This Agreement shall be governed by the laws of the Federal Republic of Germany except for the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods dated 11.4.1980).
- (4) The courts for Licensor's registered office shall have exclusive jurisdiction over all

disputes under and in connection with this Agreement, provided that Licensee is a merchant within the meaning of the German Commercial Code or if upon the commencement of legal proceedings, Licensee has no place of business or ordinary residence in the Federal Republic of Germany.

- (5) Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining terms. The parties shall in such an event be obliged to cooperate in the creation of terms which achieve such legally valid result as comes closest commercially to that of the invalid provision. The above shall apply accordingly to the closing of any gaps in the Agreement.
- (6) This agreement shall be governed by and construed in accordance with the laws of Germany.

ADDENDA

- 1 – Licensed product/s
- 2 – Extent of services / 2nd and 3rd level support
- 3 – Service level, service hours
- 4 – Maintenance Contract

Addendum 1
referring to
Maintenance and Support Agreement

Contract Products

The subject matters of the contract are software products of the

ema product family

including any subsequent and supplementary products, for e.g. support

Addendum 2
referring to
Maintenance and Support Agreement

Details of the extent of services and 1st Level Support

The details of the extent of services are set out below to this Agreement as well as from any further agreement for the provision of 1st level support

- Hotline – Single Point of Contact for the user
- Qualify the incoming requests and forward to 2nd and 3rd
- Quick help and restoration of working capacity
- Create and maintain a knowledgebase
- Application of workarounds
- Handling service requests, e.g. Reset Password

Addendum 3
referring to
Maintenance and Support Agreement

Customer Support Availability

Customer Support shall be provided during the times as set out below. All times of support availability refer to the time zone at Licensor's registered offices. Reaction and processing times are extended by the time difference between the different time zones of the licensor and the licensee or the service provider for the provision of the 1st level support

Timeline:

- 1st Level through Licensor within 1 working day
- 2nd/3rd Level through Licensor within 2 working days between 9 am till 5 pm o'clock

Addendum 4

Maintenance Contract

1 Services of the contractor

1.1 Error diagnosis and repair

The maintenance includes the error diagnosis and repair in a valid, unaltered edition of the licensed software. The rights resulting from the error diagnosis and repair including documentation are entitled to the Licensor. Errors and problems that are based on technical conditions of the Licensee systems and networks are not included in this contract. Any subsequent costs for the central service as well as the service on-site are borne by the Licensee and calculated according to the conditions agreed upon in point 5 of this contract. An error is considered to be successfully removed, if the Licensee has not reported the persistence of the error in writing within four weeks after completion of the corrective actions.

1.2 Central service

The error message of the Licensee is received via email at ema.support@imk-automotive.de. The error message includes:

- ema release number
- Contact person and contact details
- Bug description
- Data of bug proving examples if applicable

The Licensor undertakes to provide feedback to the error message within 24 hours as well as to initiate the error diagnosis and repair.

1.3 Service on-site

If the measures of the central service do not yield any result, the Licensor offers the possibility of a service onsite. The service employee will do his utmost to fix the error on site or to create a specific error description.

1.4 Development

The Licensor is constantly developing the software in the course of technical progress and provides the Licensee with updates including documentation. These include adaptation as well as functional enhancements and improvements of the ema software. The extent of development can be deduced from the three-digit version number:

1.x.x major version number (major-upgrade)

Extensive changes to the program are indicated by a new major version number. These are subject to charges and are offered as part of the maintenance contract at a reduced list price.

1.3.x version number (update)

Changes in the data model are indicated by a new version number. These are covered by the maintenance contract.

1.3.10 version status

Functional changes as well as the fixing of errors are indicated by a new version status. These are covered by the maintenance contract.

2 Obligations of the customer

The Licensor recommends the Licensee to use the current versions of the Software, unless there are legitimate interests of the Licensee which oppose this, namely with a respective period of 6 months.

The Licensee further commits himself having performed all work on fixing errors and expending the

software only by the Licensor, unless the instructions of the central service concerning error diagnosis and repair require other measures. The Licensee provides free of charge all necessary information and computer capacity for error diagnosis.

3 Maintenance Term

The agreement has a term according to the license form. Before expiry the respective contract period, the Licensor or the distributor will submit an extension offer. If the Licensee does not accept this extension offer until the end of the respective contract period, the maintenance contract ends without the need for termination. If the maintenance contract is discontinued all claims against the Licensor shall be invalidated. In this case, further use of the latest software version is permitted but by no means guaranteed.

4 Fees

The maintenance fee corresponds to the latest imk ema software suite price list valid at the time of conclusion of the contract. After a major upgrade, the maintenance fee is adjusted according to the new list price of the software. The licensor reserves the right to adjust the software price list at any time. The costs for a service employee exceeding the support contract are invoiced at the daily rates valid at the time of the service. Travel expenses are charged at cost upon presentation of supporting documents. This contract covers travel expenses for the on-site service within Germany per the conditions of point 1.1 and 1.3. If the on-site service needs to take place outside of Germany, all travel expenses will be charged to the Licensee.

5 Other provisions

All changes and additions to this contract must be made in writing. Should individual provisions of this contract be ineffective or non-executable or become ineffective or nonexecutable after the conclusion of the contract, the effectiveness of the contract remains otherwise unaffected. Instead of any ineffective or non-executable provision, the legally effective and practicable regulation shall apply, which reflects as close as possible the economic purpose intended by the contracting parties with the ineffective or non-executable provision. The above provisions shall also apply in the event that the contract is found to be incomplete. The Licensee undertakes to collect requests of licenses and support and to submit individual requests only in exceptional cases. In addition, the Licensee undertakes to document experiences in dealing with ema and to deliver them to the Licensor for free. Upon consultation, these data can be used by the Licensor for training and presentation purposes. This agreement is voluntary and revocable at any time.