Software Support and Maintenance Conditions

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hereafter the 'Contractor' or 'KPA'

§ 1 Purpose of the Agreement

The Agreement relates to the **software** (hereinafter called "software") described in **Annex 1** which is operated on the specified **operating system** in the specified version and on the specified **hardware platform.**

The Contractor must be notified in writing of any changes in the specifications set out in Annex 1

§ 2 Scope of the Agreement

The present Agreement defines the software maintenance services to be rendered to the Customer by the Contractor. The Agreement does not include the maintenance of computer hardware.

§ 3 Definitions

(1) "Major number" shall mean the first sequence in the four-sequence numerical identifier of software version code, e.g. '1' in 1.2.3.4.
(2) "Minor number" shall mean the second sequence in the four-sequence numerical identifier of software version code, e.g. '2' in 1.2.3.4.
(3) "Build number" shall mean the third sequence in the four-sequence numerical identifier of software version code, e.g. '3' in 1.2.3.4.
(4) "Revision number" shall mean the fourth sequence in the four-sequence numerical identifier of software version code, e.g. '4' in 1.2.3.4.
(5) "Bugfix" or "Patch" shall mean the resolution of a fault and will lead to an increase of the 4th digit by one, e.g. a change from 2.0.0.0 to 2.0.0.1
(6) "Update" shall mean a version of the software components that has the same or enhanced functions plus minor improvements, which mainly results from resolving faults, defects, non-compliances or malfunctions of software components. Decisive for the categorization as Update is the modification of the version code e.g. from 2.4.1.x to 2.4.2.x (as for fault resolutions or modifications without enhanced functionality). The Update relates to the last two digits of the four digit software version number of the current, i.e. the most recent software version.
Porting to new releases of the operating system defined is update. The contractor reserves the right to handle profoundly changes on the operating system as upgrade.
(7) "Upgrade" shall mean a higher level version of the software components (new version) or such with enhanced functionality or features, in this case the version number will be changed e.g. from 2.4.1.x to 2.5.0.0 (enhanced level) or from 2.4.1.0 to 3.0.0.0 (enhanced functionality). The Upgrade relates to the first two digits of the four digit software version number of the current, i.e. the most recent software version.
(8) The Update and the Upgrade does not cover:
   a. Extensions of the software by migration to a different operating system or hardware. This will require a new development tool.
   b. Adaptation of the software to the Customer's customized versions of the same operating system that is incompatible with the currently used version. This will require a new development tool.

§ 4 Hotline and customer support

(1) Support is the contractor's assistance to the Customer relating to

   1. the use of the software and

2. the installation of the software, bypasses, bug fixes, and updates, if such installation involves more than a menu-controlled transfer of the software code to the target hardware's memory.

3. the diagnosis of program faults.

(2) Support channels (by frequency of use)

1. ticketing system included in the Contractor's customer portal

2. online access to the Customer's computer

3. telephone assistance (hotline)

(3) Availability and duration of support:

- From Monday till Friday from 9am to 5pm GMT+1.
  Exception are holidays in the country of the support provider.

- Support requested in writing will be responded to no later than in the afternoon of the working day following the day on which the request was received.

- Support hours are based on purchase order, where each inquiry equals a minimum of 15 minutes.

(4) Support does not include direct assistance to the Customer's customers or any other support than that for the software defined in § 3.

§ 5 Resolution of faults (bug fixes)

(1) Faults in the software and its documentation:

a) A fault in the software shall be present, if

(a) the software is unable to perform the functions defined in its product/performance specifications when used according to the Agreement or
(b) the software is unsuitable for the use provided for in the software license agreement or
(c) the software is unsuitable for regular use and not of the quality that is standard for software of this type and that the Customer can expect from this type of software.

Specifically the following shall **not** be considered a fault under this provision:

- if the conditions described in (a)-(c) only have a minor impact on the software's usability or

- if the fault is the result of improper use of the software as provided for in § 7 (1.5).

b) A fault in the documentation shall be present, if
a knowledgeable user with basic skills in the software's use is unable to understand the operation of the individual functions from the documentation after making a reasonable effort or if such user is unable to solve problems with a reasonable effort.

(2) The manner and method chosen for the resolution of faults is at the Contractor's discretion. If the Contractor offers the Customer patches, bug fixes, a modified software version or parts thereof etc to avoid or resolve faults the Customer must adopt these and install them according to the Contractor's instructions on its hardware (if and as soon as rea-

sonable).

(Resolution of faults in the form of patches, bug fixes or a modified software version may be rejected by the Customer, if their compatibility and functionality differ from that of the replaced software/software part).

Further faults may be resolved by instructing the Customer to take certain actions. The customer must follow such instructions, unless these are unreasonable.

The Contractor will have complied with its obligations to resolve faults when all faults as defined in § 5 (1) have been eliminated.

If the Contractor is unable to resolve the fault within a reasonable period it will make available a bypass at its own expense (to the extent financially reasonable for the Contractor). Making available a temporary bypass shall not affect the Contractor's obligation to resolve the fault permanently.

§ 6 Delivery of new parts of the software (update)

(1) The Contractor shall provide the Customer with all updates released by the Contractor according to § 3. This shall include relevant additions/updates of the software documentation.

(2) The software parts shall be delivered by making available the object code by the Contractor. The Contractor does not owe the provision of the source code.

(3) The Customer must install the new software parts in the proper form and as instructed. Earlier software versions will be supported for a maximum period of twelve months after the most recent version became available. If the adoption of the latest version is unreasonable for the Customer because of the effort entailed in a conversion, the Customer may request the maintenance of the version used by it until the Contractor offers another version, however, no longer than two years. The Customer is not entitled to the simultaneous maintenance of both an older and a current version by the Contractor. Should the Customer require such simultaneous maintenance a separate agreement must be made with the Contractor.

(4) The Contractor warrants conformity to the EtherCAT specification current at the time as well as to the version of the operating system released by the manufacturer according to the type and hardware platform chosen by the Customer in **Annex 1**. The Contractor owes conformity not earlier than 6 months after specification or version of the operating system is publicly released.

(5) The customer has the opportunity to give input for further developments of the software via the Contractor's customer portal. The Contractor shall seriously consider the Customer's suggestions, however, without any commitment to implementing these.

§ 7 Other Services

(1) At the Customer's request the Contractor shall provide the following services related to the software that are not included in the services described in §§ 4, 5 and 6 of the present Software Maintenance Agreement and will be compensated separately according to § 8. Such services include

   1. Services provided by the Contractor at the Customer's premises; services requested by the Customer at times outside the normal hours of availability;

   2. Services exceeding the maximum number of support hours and provided at the Customer's request;

3. Software services required as a result of improper handling and/or non-compliant behaviour of the Customer such as violation of the instructions for installation or use;

4. Software services required as a result of improper operation or negligently or intentionally caused damage or modification of the software;

5. Software services required as a result of force majeure or other circumstances outside of the Contractor's responsibility;

6. Software services related to the installation of an upgrade provided to the Customer, such as instructions and training for the respective software version;

7. Adaptation of the software to modified and/or new hardware platform or another type of operating system used by the Customer than specified in **Annex 1**;

8. Adjustments of the software exceeding those provided by the Contractor under § 6 such as might result from different or new user requirements.

9. Adjustments of the Toolchain supplied by the customer and the adopted OSAL, as far as the adjustment is not part of the order.

(2) The Contractor shall provide services as described in this § 7 to the Customer to the extent permitted by its operations.

§ 8 Compensation

(1) The maintenance fee for the services described in §§ 4, 5, and 6 and the duration of this Maintenance Agreement are laid down in **Annex 1.**

(2) The fee shall be payable plus sales tax as valid at the time.

(3) The prices according to the Contractor's price list applicable at the time the service is provided will be charged for the services under § 7 above.

(4) The customer shall assume the cost for services other than those rendered as part of the warranty for material and/or legal defects and other than those covered by the fee defined in clause (1) above. The cost includes any travelling and other expenses and will be billed according to the Contractor's hourly and travelling cost rates applicable at the time the services are provided.

(5) Travelling and other expenses shall be charged, if the Customer requests the Contractor's presence on site or for other services as defined in § 7.

§ 9 Term of the Agreement and notice periods

(1) The Agreement shall become effective when signed by both parties.

(2) The Agreement will be valid for the period defined in the order/contract.

(3) Either Party may terminate the Agreement with immediate effect, if the other Party defaults on one or several of its obligations and does not remedy the violation within a period of 14 days despite the other Party's written reminder of performance. A termination with immediate effect is also possible without previous reminder, if the continuation of the Agreement is unreasonable for the terminating Party with due consideration of the specific circumstances and the balance of the interests of both Contracting Parties.

(4) Any termination must be made in writing to be effective.

(5) Maintenance fees paid in excess shall be reimbursed pro rata.

§ 10 Customer's obligation to cooperate

The Customer shall support the Contractor in the performance of the Contractor's obligations under the contract at the Customer's expense.

These obligations to cooperate specifically include the following:

- observing the symptoms, the software, the system and hardware environment closely when faults are notified and providing the Contractor at the time of notifying the fault with all information useful for resolving the fault such as the versions of the software and the operating system and the hardware environment and any third party software running simultaneously;

- providing the Contractor with log files for any malfunctions determined to make them reproducible;

- using its best efforts to support the Contractor in determining the cause of a fault and instructing its staff to cooperate with the Contractor's agents (if required);

- permitting the staff commissioned to perform the services under the Agreement by the Contractor remote access to the computers on which the software to be serviced is saved and/or running;

- installing the software or software parts (patches, bug fixes) according to the Contractor's instructions (immediately) and complying with the Contractor's proposals and instructions for remedying faults;

- attending test runs either personally or through a competent member of staff who is authorized to assess and decide on faults, extensions or limitations of functionalities and software structure modifications.

§ 11 Liability, Force Majeure

General principle

Both Parties shall have unlimited liability for violations of obligations under this Agreement in case of

- intent, gross negligence and gross organisational faults,
- damage resulting from personal injury to life and limb irrespective of fault, or
- when assuming a warranty.

Contributory fault

The Customer will be responsible to its contribution to the fault, if damage was caused by a fault both of the Contractor and the Customer.

Insurance

At the request of the other Contracting Party each of the Contracting Parties shall prove to the other manufacturer's liability insurance coverage in the required amount, however, no less than euros 2,000,000 for personal injury, euros 1,000,000 for damage to property and a minimum of euros 150,000 for financial losses.

Limitation of liability

(1) KPA's liability for damage caused by KPA or any of its agents or legal representatives with intent or due to gross negligence is unlimited.

(2) Other than provided for in clause 1 above KPA's liability shall be limited to the amount of damages typical and to be expected for this kind of agreement when KPA has breached major obligations under the contract or duties.

(3) in all other cases KPA's liability shall be limited to a maximum of € 300,000.

(4) § 11 no. 7 applies mutatis mutandis for the period of limitation, provided, however, that the statutory period of limitation shall apply for claims in the sections 'General Principles' and 'Product Liability'. The period of limitation under sentence 1 starts at the time as defined in section 199(1) German Civil Code. It shall start no later than after the maximum periods defined in section 199 (3) and (4) German Civil Code.

Product Liability Act

The foregoing shall not affect liability under the Product Liability Act.

Force majeure

(1) If KPA is prevented from performing its duties by unforeseeable, extraordinary circumstances that KPA cannot control despite exercising reasonable diligence such as

- disruption of operations
- government acts
- energy supply disruptions
- strikes or lockouts,

affecting KPA directly or its suppliers, the term for delivery shall be reasonably extended, unless the delivery or service becomes impossible thereby. If the delivery or service becomes impossible by such circumstances KPA shall be released from its obligation to perform. The customer does not owe any compensation.

(2) If the Customer is prevented from accepting the software by any of the circumstances described in clause 1 above, the deadline for acceptance shall be reasonably extended.

§ 12 Sub-contractors

The Contractor may generally transfer the maintenance of the software to sub-contractors fully or in part.

§ 13 Conflict with other general terms of business

If the Customer uses General Terms of Business the Agreement shall become effective also without express agreement of the incorporation of the General Terms of Business. All of these terms with identical meaning shall hereby be deemed as agreed. Dispositive law shall apply when individual terms are in conflict with each other. The same shall apply, if the Customer's general terms of business include provisions that are not included in the present terms. If the present general terms include provisions not included in the Customer's general terms, the Contractor's terms shall apply.

§ 14 Acknowledgment of information given and received

The customer is aware of the application of the present general terms of business by the Contractor. The customer had the opportunity to take reasonable notice of these terms.

§ 15 Miscellaneous

(1) Any modifications and amendments or additional arrangements must be made in writing to be legally binding. This requirement of written form may only be waived in writing, unless the law provides for more stringent requirements. Electronic versions with qualified electronic signature (§ 126a German Civil Code) or any other electronic version (§ 127 (3) German Civil Code) shall not replace the written form.

(2) If any of the provisions of this agreement are or become ineffective or if it includes inadmissible time limits or gaps this shall not affect the effectiveness of the remainder of the provisions. Unless the ineffectiveness is not the result of an infringement of § 305 et seq. German Civil Code (applicability of general terms and conditions) an effective provision shall apply in place of the ineffective one that comes closest to the Parties' original commercial purpose. The same shall apply for the closing of contractual gaps. If an inadmissible time limit has been set the legally admissible period shall apply instead.

(3) The attached Annexes form integral parts of the present Agreement and are subject to the same formal requirements including for any modification.

(4) The Agreement shall be exclusively governed by German law; the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

(5) The place of the registered office of KPA shall be the place of performance and of jurisdiction.

(6) The German version of the Agreement shall govern and prevails over any translation.

The following Annexes are integral parts of the Agreement:

Annex 1:

Details of software you can find
- inside the email you get you after the license activation
- in your login-area at KPA web-site under "Support"