

MAINTENANCE PROVISIONS

Insight Control Panel (for Maximo)

V1.1

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SPIE Deutschland & Zentraleuropa
GB Industry Service & Wind

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1 Introduction

The client is interested in software maintenance to ensure that the SPIE RODIAS Insight Control Panel is used as error-free as possible and that the option of upward compatibility is maintained. The Insight Control Panel includes Insight Mobile and Insight Desktop (formerly Usability Package).

2 Subject Matter

- 2.1 The subject matter of the contract is the ongoing software maintenance of the contractual software Insight Control Panel. The Insight Control Panel includes Insight Mobile and Insight Desktop (formerly GiS Usability Package). The statements described below apply to all parts of the Insight Control Panel.
- 2.2 The provisions of this software maintenance agreement apply exclusively. The customer's general terms and conditions shall not apply; this shall also apply if SPIE RODIAS does not expressly object to their validity.
- 2.3 Other services, such as advice on software selection, development, licensing, installation, implementation, adaptations/extensions and their maintenance, parameterisation, customising or instruction or training, etc., are not the object of this software maintenance agreement. If SPIE RODIAS offers such services, they shall be subject to other contractual terms.

3 Prerequisites

SPIE RODIAS undertakes to maintain the contractual software during the term of the contract in accordance with the present software maintenance agreement if the following conditions are met:

- 3.1 The maintenance services always relate to the entire inventory of the contractual software of the Client. The Client may only make use of the maintenance services provided for in this Software Maintenance Agreement for a component of the Contract Software if all installations of the Contract Software containing this component are maintained by it in software maintenance with regard to the component in question. Any further purchased or licensed components of the Contract Software as well as any extensions of use must be added to the Software Maintenance by an amendment to this Software Maintenance Agreement.
- 3.2 The Client shall use the current major release of the Contract Software or the major release that is exactly one level older. The version number of the Contract Software is composed as follows and provides information about the respective release and patch status:

■ Major Release	Significant change in the program
■ Minor Release	functional enhancements and bug fixing of the program
■ Patch	small troubleshooting of the program

Explanatory example: 15.0.1 Major Release = 15; Minor Release = 0, Patch = 1

- 3.3 SPIE RODIAS shall provide the maintenance services exclusively for the respective current major release of the contractual software as well as for the preceding major release. Older major releases and versions are not subject to the agreed software maintenance. If the customer uses an older major release of the contract software which is no longer subject to the contractual software maintenance, the customer has the option of obtaining an offer from SPIE RODIAS for individual maintenance of the obsolete major release used by the customer.
- 3.4 A prerequisite for error correction by SPIE RODIAS is that the error is reproducible and occurs in the functional scope of the product description (ICP PRODUCT DESCRIPTION) in a major release that is subject to software maintenance pursuant to Section 3.3.
- 3.5 The Client shall use the Contract Software in a suitable system environment (hardware and software) and in a suitable network environment. Which environments are suitable for the use of the Contract Software can be found in the respective documentation of the Contract Software (Insight Manual), see <https://insight-control-panel.github.io/documentation/>
- 3.6 The Client's users are sufficiently trained in the safe use of the Contract Software.

4 First level support - task of the customer

- 4.1 Under this Agreement, the Client shall provide first-level support for the complete contractual software. The Customer has appointed key users for this purpose. The inquiries or error messages of the end users of the Customer shall be received by these key users, recorded as a ticket, initially classified and problems solved if possible. First-level support also includes the following tasks:
- Initial problem analysis and documentation for verification and reproduction of the problem; this includes review of the required diagnostic material to be provided by the client (e.g. log files, test data, etc.)
 - Diagnosis and correction of simple operating and configuration problems
 - Narrowing down the problem to the affected components of the contract software, as far as this is possible.
- 4.2 Only tickets that have been classified as potential errors by the key users will be forwarded to SPIE RODIAS by the key users. Only these will be recorded and reported in the SPIE RODIAS customer portal
- 4.3 A defect in the contractual software within the meaning of Section 4.2 exists if functions of the contractual software cannot be used in accordance with the contractually agreed documentation (Insight Manual), incorrect results occur, the program run is interrupted in an uncontrolled manner or the use of the software is impaired or prevented in some other way that is contrary to the function. The customer is aware that the contractual software is a framework that cannot be used in a meaningful way without configuration. Errors in the sense of this contract are always only errors of the framework and not errors of the contractual software configured for the Client.

- 4.4 The customer's key users are trained in the contract software and are particularly familiar with the overall procedure and the individual components of the contract software. Access to the support at SPIE RODIAS is no substitute for missing training or for insufficient system knowledge. In-depth system knowledge and knowledge of the contract software are assumed for the key users.

5 Maintenance Services of SPIE RODIAS

SPIE RODIAS shall provide second-level support for the contractual software and undertakes in this respect to provide the following maintenance services:

- 5.1 SPIE RODIAS shall keep trained employees available to provide qualified support for the client and to fulfil the contractual conditions
- 5.2 SPIE RODIAS performs error corrections due to error messages from other licensees.
- 5.3 SPIE RODIAS enables support tickets to be opened in a customer portal by authorised persons of the Principal around the clock, 24 hours/7 days a week. These persons must be set up by SPIE RODIAS in the customer portal.

<https://jira.rodias.de/servicedesk/customer/portals>

Tickets must be opened in German or English.

- 5.4 SPIE RODIAS guarantees a response time to incoming tickets depending on the priority during the service hours. The service times are

Mon. - Thu. 08:00 - 17:00 (CET / CEST)

and

Fri. 08:00 - 14:00 (CET / CEST),

unless it is a public holiday at the place of business of SPIE RODIAS.

- 5.5 Reported errors are categorised according to priorities and classified by the contracting parties by mutual agreement:

■ Prio 1 "defect preventing operation"

Use of the contractual software impossible or so severely restricted that the productive operation of the contractual software cannot be continued and the Client is threatened with high economic losses or damages due to the loss of use or the restriction of use; the defect cannot be circumvented even with reasonable organisational or technical aids.

Examples:

- Complete programme abortion
- failure of essential functions
- severe malfunctions
- Delivery of exclusively incorrect work results

- Causing data loss or data corruption

Response time: maximum 4 hours within service time

- Prio 2 "Defect hindering operation"

Essential functions of the contractual software are impaired or do not work in the intended manner and productive operation with regard to the affected function can only be continued to a limited extent without this defect being able to be circumvented with reasonable organisational or technical aids; impairment may lead to not inconsiderable economic losses or damage for the Client.

Examples:

- Failure of individual functions
- Calculation errors
- missing or faulty plausibility checks
- incorrect error message

Response time: maximum 16 hours within service time

- Prio 3, "slight defect"

Contractual software usable with slight restrictions, if applicable, through the use of reasonable organisational or technical aids, so that all essential and most other functions can be used; no or only an insignificant restriction in the productive operation of the contractual software.

A simple defect also exists if the use of the contractual software is not directly or significantly impaired, such as in the case of unfavourably defined basic settings, missing "nice-to-have functions" or existence of a workaround based on reasonable organisational or technical aids.

Response time: maximum 32 hours within service time

The response time is the time between receipt of the report of the fault at SPIE RODIAS and the start of activities at SPIE RODIAS within the service time

- 5.6 The Client must provide all information necessary for understanding and reproducing the reported error.
- 5.7 If SPIE RODIAS cannot reproduce the error on the basis of the documentation provided by the customer, SPIE RODIAS is entitled to reject the error message without further processing or to demand the creation and provision of documentation on the basis of which the error can be reproduced.
- 5.8 The error message, analysis and correction for the client as well as the delivery of new releases and patches of the Contract Software to the client shall be logged in the SPIE RODIAS Customer Portal.
- 5.9 If, in the course of the analysis by SPIE RODIAS, it turns out that the cause of a reported error lies outside the sphere of responsibility of SPIE RODIAS or that there is no error

within the meaning of clause 4.3, the costs incurred in connection with the analysis shall be borne by the customer in an appropriate manner

5.10 The Insight Manual documents which versions of backend software (e.g. IBM Maximo, SAP PM and Infor EAM) are supported.

5.11 Within the scope of its release cycles determined at its own discretion, SPIE RODIAS shall make new major and minor releases of the contract software available at the following website:

<https://insight-control-panel.github.io/documentation/>

5.12 If required and in agreement with the client, SPIE RODIAS will remotely connect to the servers or to client PCs in order to analyse or solve problems. A prerequisite is that the customer provides corresponding technical access free of charge. Furthermore, an agreement on commissioned data processing in accordance with DSGVO must be made, as the processor at SPIE RODIAS may also see personal data in the system. For details see Annex A.

5.13 An administrator/coordinator is available at the client to clarify and prioritise end user problems before they are submitted to SPIE RODIAS (first level support).

5.14 The place of performance shall be determined by SPIE RODIAS at its reasonable discretion. As a rule, this shall be the business premises of SPIE RODIAS.

Our employees are subject to a special obligation of confidentiality. The absolutely confidential treatment of all communications and processes that become known to us during the performance of our work is part of our special professional duties.

6 Excluded services

6.1 SPIE RODIAS does not owe any further maintenance services than those agreed in Clauses 5. In particular, SPIE RODIAS shall not provide any maintenance services for standard products of other manufacturers (IBM Maximo) or for customer-specific configurations.

6.2 Furthermore, the following work in particular is excluded from software maintenance:

- Tasks that fall within the scope of first level support
- Elimination of problems which are not caused by errors or defects of the contract software created and delivered by SPIE RODIAS
- Elimination of problems caused by adaptation or version changes of operating systems or third-party software.
- Elimination of problems with the contractual software, if the observed misbehavior can be traced back to hardware, the use of which has not been coordinated with SPIE RODIAS.
- Maintenance services outside the specified service times
- Repair of malfunctions caused by incorrect operation, improper handling or negligence on the part of the Customer or third parties.

- Maintenance services for software to which this software maintenance agreement does not apply
 - Maintenance services caused by a change of the installation location or changed operating conditions at the same installation location (recommissioning)
 - Elimination of problems caused by environmental conditions at the installation site, by errors or failure of the power supply, faulty hardware or other effects for which SPIE RODIAS is not responsible.
 - Maintenance services for contractual software supplied by SPIE RODIAS but modified by the customer or an unauthorized third party without SPIE RODIAS' consent and subsequent release
 - Import of patches
 - Support in connection with release upgrades to other minor or major releases
 - Customer-specific further developments, adaptations and configuration changes of the contract software.
- 6.3 The aforementioned services may, however, be provided by SPIE RODIAS in individual cases on the basis of a separate agreement to be concluded with the customer independently of this agreement. There shall be no entitlement to the conclusion of such an agreement.
- 6.4 If, in the course of the analysis by SPIE RODIAS, it turns out that the cause of a reported error lies outside the sphere of responsibility of SPIE RODIAS or that there is no error within the meaning of clause 5, the costs incurred in connection with the analysis shall be borne by the customer in an appropriate manner.

7 Customer's duty to cooperate

7.1 Support in case of queries

In case of queries by SPIE RODIAS and reproduction of errors, the client shall support SPIE RODIAS to the best of his ability.

7.2 Access to the customer's computer

For error analysis and testing purposes on the customer's test system, the customer shall provide SPIE RODIAS with remote access to a suitable customer computer from the SPIE RODIAS software center. If SPIE RODIAS deems this necessary, the customer shall also provide on-site access to suitable computers of the customer. The customer grants this remote or on-site access to SPIE RODIAS free of charge and grants authorized SPIE RODIAS employees the necessary rights (including administrator rights, database access and access rights to the file system, if applicable).

7.3 Test system

The customer shall comply with the deployment requirements specified by SPIE RODIAS for the operation of the contract software (e.g. compliance with the system requirements) and undertakes to set up and operate a functional test system on which

all modifications of the contract software can be tested under conditions that are as close as possible to production conditions, including the customizing and parameter settings as well as configuration changes made by the customer himself or by third parties commissioned by him. This shall apply in particular before the import of patches or new minor or major releases of the contractual software.

7.4 Test possibilities for SPIE RODIAS

The customer shall provide sufficient test possibilities on the system on which the reported error occurred; if possible, this shall be the test system according to Section 9.4 and only in indispensable cases a productive system. This includes the rights required for the tests and the possibility of temporary program modifications.

7.5 Cooperation of the customer

To the extent necessary for the performance of the contractually agreed services, the customer shall perform tests as instructed by SPIE RODIAS and shall send the resulting log files to SPIE RODIAS.

7.6 Changes to the system platform

If the customer plans changes to the system platform, it shall notify SPIE RODIAS of these in advance, insofar as they affect the contractual software.

7.7 Changes to the system environment

If the customer learns of changes to interfaces to the contract software or initiates these, it shall inform SPIE RODIAS promptly thereof.

7.8 Changes to the remote access

If the customer learns of or initiates changes to the remote access, the technical details will be coordinated with SPIE RODIAS.

7.9 Data backup

The Customer itself shall be responsible for an appropriate backup of its data. In particular, the Client shall be obliged to take precautions in the event that data is deleted in the course of troubleshooting measures.

7.10 Delays on the part of the customer

Delays on the part of the customer in cooperating in the performance of maintenance services shall lead to a reasonable extension of the performance deadlines for the maintenance services on the part of SPIE RODIAS if delays occur despite SPIE RODIAS notifying the customer in good time.

8 Prices and terms of payment

8.1 Annual maintenance fee

The annual maintenance fee shall be determined on the basis of the type and number of licenses acquired by the Customer.

An overview of the support fees are documented in Appendix B "License Sheet". Prices may vary in future periods due to subsequent purchases of licences. Prices are subject to price increases

8.2 Price validity and price adjustments

SPIE RODIAS reserves the right to adjust the fees for maintenance services during the term of the agreement if the costs or expenses incurred by SPIE RODIAS in the context of the provision of the service change. Irrespective of this, SPIE RODIAS is entitled to adjust the fees for maintenance services if the performance or functional scope of the contract software has been expanded by major releases delivered within the scope of the software maintenance in such a way that SPIE RODIAS has also generally increased the list price for the distribution or software maintenance of the components concerned. In the event of price increases, SPIE RODIAS will observe the customary industry practice and, in addition, will always only carry out reasonable price increases. SPIE RODIAS may only carry out price increases at the beginning of a calendar year and increase the net remuneration for maintenance services by a maximum of five percent (5%). Deviating from this, the price increase may amount to a maximum of ten percent (10%) if more than twelve (12) months have passed since the last increase. SPIE RODIAS will inform the customer of any price adjustment three (3) months before it takes effect.

8.3 Notwithstanding the preceding paragraph, three (3) months before the end of each calendar year a discussion will take place between the customer and SPIE RODIAS on the adjustment of the contract for the following year

8.4 A set-off against claims of SPIE RODIAS is only permissible with undisputed counterclaims that are ready for a decision or with counterclaims that have been established as final and absolute. The customer may only assert a right of retention on the basis of claims that are undisputed, ready for decision or established by final and binding judgment and that are based on the same contractual relationship.

8.5 The customer shall pay the amounts stated to SPIE RODIAS without deduction fourteen (14) days after receipt of the invoice. Payments shall be made free of charges and costs to an account to be named by SPIE RODIAS. All prices are exclusive of the statutory value added tax applicable at the time, insofar as this is incurred.

9 Contract term and termination

9.1 The term of the contract begins with the signing and ends after one year. The contract shall be extended by one year at a time if no notice of termination is given. Notice of termination must be given in writing at least 60 days before the end of the current support period. In case of need, only individual annexes of the contract will be renewed so that the main contract remains valid.

9.2 The right to extraordinary termination for good cause remains unaffected.

9.3 No later than 45 days before the expiry of the currently valid support period, SPIE RODIAS shall submit a follow-up offer for the following support period (12 months) including an updated License Sheet (Annex B). The CL shall order the following no later than 30 days before the expiry of the support period.

10 Service disruptions

- 10.1 If the maintenance service is not provided in accordance with the contract and SPIE RODIAS is responsible for this, it shall be obliged to provide the maintenance service in accordance with the contract within a reasonable period of time without additional costs for the customer.
- 10.2 The prerequisite is a complaint by the customer, which must be made immediately after the customer has become aware of it, at the latest two (2) weeks after becoming aware of it.

11 Liability for defects

- 11.1 The client must immediately notify SPIE RODIAS of material and legal defects in writing. If there is a material or legal defect in the care services, SPIE RODIAS will, at its own discretion, carry out subsequent performance by remedying the defect or by delivering a defect-free item.
- 11.2 The client shall grant SPIE RODIAS a reasonable period of time to carry out the subsequent performance. In the event of failure of subsequent performance, SPIE RODIAS shall be liable within the scope of the statutory provisions adapted in accordance with clause 17.3 and the limitations of liability agreed in clause 19. 5.713
- 11.3 If the client is entitled to a reduction due to inadequate care services, this claim for reduction relates exclusively to the agreed care fees. Any right to withdraw from the contract due to inadequate care services shall be replaced by the right to terminate this contract without notice for good cause.
- 11.4 Liability for defects is excluded if a modification of the contract software or any care provided by someone other than SPIE RODIAS or its agent has been made, or the use of the contract software or any care services has taken place in a system environment other than the agreed environment or together with computer programs not supplied by SPIE RODIAS.
- 11.5 However, this exclusion of liability for defects does not apply if the client can prove that the above-mentioned acts are unrelated to the defect that has occurred. However, if the analysis or the rectification of defects is significantly complicated by the taking of such actions, the client shall bear the additional costs of subsequent performance resulting therefrom.

12 Limitation of claims for defects

- 12.1 For claims for defects of the Customer based on the fact that the maintenance service provided was defective at the time of transfer of risk to the Customer, the period of limitation shall be one (1) year.
- 12.2 If SPIE RODIAS breaches a consulting or support obligation incumbent upon it under this agreement, the customer's claims resulting therefrom shall become statute-barred after one (1) year.

- 12.3 The commencement of the limitation period shall be governed by the statutory provisions.
- 12.4 In deviation from clauses 18.1 and 18.2, the statutory limitation period shall apply if SPIE RODIAS is responsible for malice, intent or gross negligence or has assumed a guarantee for the relevant quality of the performance or if SPIE RODIAS is liable for injury to life, body or health or under the Product Liability Act.

13 Liability

- 13.1 SPIE RODIAS shall be liable in the event of intent, malice, product liability law, lack of the quality guaranteed by SPIE RODIAS and damages resulting from injury to life, body or health in accordance with the statutory provisions.
- 13.2 If SPIE RODIAS is responsible for gross negligence, liability is limited to foreseeable damage typical of the contract.
- 13.3 In the case of simple negligence, SPIE RODIAS shall only be liable for whatever legal reason if an essential contractual obligation has been breached, i.e. an obligation whose fulfilment enables the proper execution of the contract in the first place and on whose compliance the client regularly trusts and may rely (e.B. obligation to provide non-defective care services). In this case, liability shall be limited to foreseeable damage typical of the contract at the time of conclusion of this contract.
- 13.4 In the case of SPIE RODIAS' liability, due regard shall be taken into account by the client' co-responsibility, in particular in the case of insufficient error messages, insufficient data protection or a lack of safeguards to ensure information security.
- 13.5 Insofar as liability in accordance with paragraphs 13.2 and 13.3 contract, SPIE RODIAS assumes that (a) ten thousand (10,000) euros per claim and (b) for all damages caused during a calendar year, a total of thirty thousand (30,000) euros are sufficient to cover the foreseeable damage typical of the contract in the event of damage.
- 13.6 The limitations of liability agreed in this section 13 also apply in favour of SPIE RODIAS' legal representatives and vicarious agents.
- 13.7 The above provisions of this paragraph 13 shall apply accordingly if SPIE RODIAS is to pay compensation in place of damages.
- 13.8 Further than herein expressly stated in clause 13 liability claims of the client for compensation for damages or expenses are excluded, regardless of the legal reason. This applies in particular to liability through no fault of the.

14 Assignment to a Third Party

The customer (end customer) may assign rights under this agreement to third parties only with the prior written consent of SPIE RODIAS.

15 Confidential information

- 15.1 The contracting parties shall treat essential and not generally known matters of the other contracting party as confidential. Strict confidentiality shall apply in particular to business and trade secrets.
- 15.2 The confidentiality agreement shall also apply beyond the term of this contract.

16 Data protection

- 16.1 Both contracting parties undertake to comply with the provisions of data protection law.
- 16.2 SPIE RODIAS shall process personal data only for contractually agreed purposes within the scope of this contract and on the basis of other written instructions of the CL and only in compliance with the provisions of data protection law. The relevant regulations on order data processing are contained in Attachment A (Agreement on order data processing), which forms an integral part of this contract. and shall take precedence over the provisions of this Agreement in the event of contradictions and ambiguities regarding data protection and, in particular, commissioned processing.
- 16.3 SPIE RODIAS shall ensure that, when processing personal data, it only employs personnel who are bound to confidentiality within the meaning of Art. 28 para. 3 lit. b GERMAN GDPR or who are subject to an appropriate statutory duty of confidentiality.

17 References

The customer shall grant SPIE RODIAS the right to publicly point out that the customer uses software from SPIE RODIAS. In this respect, SPIE RODIAS is entitled to report internally and externally on the business relationship with the customer, subject to the generally customary duties of confidentiality. This includes e.g. press releases, success stories, project reports and presentations, including the naming of the customer. For this purpose, the CL shall provide SPIE RODIAS with the respective current company logo for use in the aforementioned context. Publications beyond the naming and logo display require the release by the CL and must be designed in such a way that infringements of the CL's rights are excluded.

18 Final provisions

- 1.1 Amendments and supplements to this Agreement must be identified as such and must be in writing and signed by both parties. The text form shall not be sufficient for this purpose unless otherwise expressly stipulated in this Agreement.
- 1.2 Should individual provisions of this contract be or become invalid, the validity of the remaining provisions shall not be affected thereby. The ineffective provision shall be replaced by an effective provision which most closely achieves the purpose pursued by the ineffective provision. The same shall apply if a loophole requiring regulation or supplementation becomes apparent during the execution of the contract
- 1.3 This contract shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods dated 11.4.1980 (UNCITRAL Sales Convention)

1.4 The exclusive place of jurisdiction for all disputes arising from and in connection with this contract shall be Mannheim, Germany.

1.5 The following attachments form an integral part of this Agreement:

- Anlage A - Agreement on order data processing (Vnn vom tt.mm.jjjj)

Anlage B – Licenssheet