

## ESABASE2 Software Support Contract

This Software Support Contract is entered into by and between:

**etamax space GmbH**

having its registered office at

Frankfurter Straße 3 d	Phone: +49 (0)531.866688.33
38122 Braunschweig	Fax: +49 (0)531.866688.99
Germany	Email: <a href="mailto:esabase2@etamax.de">esabase2@etamax.de</a>

(hereinafter referred to as "etamax")

and

.....

having its registered office at

Street:	Phone:
Postal Code, City:	Fax:
Country:	Email:

(hereinafter referred to as "Licensee")

either or both of which may be hereinafter referred to as "the Party" or "the Parties".

## 1 Terms and Conditions

*Please read the following terms and conditions carefully before accepting the following Support Contract.*

etamax and the Licensee agree that the following terms and conditions shall govern the delivery of support services ("Services") by etamax to the Licensee with respect to the ESABASE2/Debris software ("ESABASE2" or "the Software").

## 2 Validity

This Support Contract is effective upon after signature by both parties ("Support Commencement Date"). The contract remains in force for one year, following the support commencement date and might be renewed according to the conditions given below.

## 3 Support Services

### 3.1 Services

Subject to the general terms and conditions set forth below, etamax shall provide the following maintenance and support services for the Software (the "Services"):

- Basic telephone and email support services at commercially reasonable level, Monday through Friday between 10:00 and 16:00, excluding holidays,
- Error correction services, as further set forth below, and
- Updates, as further set forth below.

### 3.2 Error Correction Services

During the term of this Support Contract, etamax shall use commercially reasonable efforts to correct or provide a workaround to any error in the Software, which causes a substantial impairment of serviceability. In addition, etamax shall use commercially reasonable efforts to provide an initial callback to the Licensee during business hours.

### 3.3 Updates

etamax shall provide Updates to ESABASE2 as etamax makes such Updates available. For purposes of this Support Contract, "Updates" means any new releases, revisions, corrections, patches and updates of the Software and its documentation. Updates will be provided via the "Downloads" area of the ESABASE2 website (<http://www.esabase2.net>). The Licensee will be granted access to the User's and Downloads area from the Support Commencement Date onwards.

### 3.4 Scope of Services

etamax shall provide support to the Licensee by telephone or email. Services do not include on-site services or system engineering services of any kind. Services shall not be provided for any problems, defects or errors in the Software that are caused by Licensee's use of the Software in an environment or in a manner not covered by the system requirements or approved by etamax.

### 3.5 Excluded from Support Services

etamax shall not be required to provide any Services relating to problems arising out of

- Licensee's use of the Software in a manner for which is was not designed,
- operation of the Software in a software or hardware environment not recommended by etamax,
- operation of the computer on which the Software is installed or used in environmental conditions outside those prescribed by the computer manufacturer,
- Licensee's negligence, misuse or modification of the Software, caused in whole or in part by third-party hardware or software, or
- failure by Licensee to install the version of the operating system software specified by etamax for use with the release version for which services are requested,

- failure by Licensee to properly maintain the computer on which the Software is installed or used in accordance with standards of maintenance prescribed by the computer manufacturer,
- Software being serviced, maintained or modified by anyone other than etamax.

In addition, no Services are granted with respect to problems arising from third party software contained in ESABASE2, namely Open Cascade, Eclipse, JFreeChart and JFreeReport (Pentaho).

## 4 Fees

### 4.1 Service Fees

No Annual Service Fees have to be paid for this type of Support Contract.

### 4.2 Changes in the Fees

etamax reserves the right to change the Annual Service Fee upon written notice to the Licensee; provided, however, that any such change will not take effect until the next one-year period.

## 5 Special Conditions

In case that no Annual Service Fee has to be paid by the Licensee, the following special conditions for the use of ESABASE2 shall apply:

- The software is provided for internal use only.
- The software may not to be used for work for customers which themselves would require a Support Contract containing the payment of an Annual Service Fee (no Students, Universities, Space Agencies, public research labs, private persons).
- Results obtained with ESABASE2 may only be published upon acceptance by etamax or ESA.

## 6 Renewals and Termination

### 6.1 Renewals

This Support Contract will commence on the Support Commencement Date and continue in full force and effect, unless earlier terminated pursuant to the terms and conditions herein, for a period of one (1) year. This Support Contract will be automatically renewed for successive renewal terms of one (1) year each upon the Licensee's payment of the then-current Annual Service Fee.

If the Support Contract will not be renewed, the ESABASE2 licence will expire automatically.

### 6.2 Termination

Either party may terminate this Support Contract upon the material breach by the other party if the breaching party fails to cure such breach within thirty (30) days after receipt of written notice of such breach. Sections 4 and 6.1 and any payment obligations incurred prior

to termination or expiration of this Support Contract will survive such termination or expiration.

The termination of the Support Contract automatically results in the expiration of the ESABASE2 licence.

### 6.3 Cancellation

Either party may cancel this Support Contract upon three (3) months notice prior to the end of the Support Period to the other party. The cancellation has to be submitted in writing by mail.

## 7 Warranty and Disclaimer

etamax warrants that the Services will be performed in a workmanlike manner with the ordinary degree of skill prevalent in the industry. The Licensee's sole and exclusive remedy, and etamax's entire liability, for etamax's breach of this warranty is for etamax to perform the Services in a manner consistent with this warranty. Except as specifically set forth herein, the services are provided "as is" without warranties of any kind. Without limiting the foregoing, etamax disclaims any and all warranties and representations of any kind, whether express, implied, or statutory, including without limitation the implied warranties of merchantability, fitness for a particular purpose, title, and noninfringement. Both parties acknowledge that they have not entered into this agreement in reliance upon any warranty or representation other than those set forth above.

## 8 Limitation of Liability

In no event will either party be liable for lost profits or special, incidental, or consequential damages arising out of or related to this Support Contract (whether from breach of contract, breach of warranty, or from negligence, strict liability, or any other form of action), even if it has been advised of the possibility of such damages. This limitation of liability shall apply notwithstanding the failure of essential purpose of any limited remedy herein. In no event will etamax's aggregate, cumulative liability arising out of or related to this agreement exceed the sum of all annual service fees actually paid to etamax by the Licensee under this Support Contract during the twelve (12) month period immediately preceding the first event giving rise to liability.

This limitation of liability is cumulative, with all liability payments being aggregated to determine satisfaction of the limit. The parties acknowledge that the pricing specified in this agreement reflects the allocation of risk set forth in this Contract and that etamax would not enter into this Contract without the foregoing limitations of its liability and the warranty disclaimers contained herein.

## 9 General Provisions

### 9.1 Governing Law

This Support Contract shall be governed by and construed in accordance with the laws of Germany, without regard for principles of choice of law.

## 9.2 Independent Contractors

Each party will perform its obligations hereunder as an independent contractor and, except as expressly provided to the contrary in this Support Contract, will be solely responsible for its own financial obligations. Nothing contained herein shall be construed to imply a joint venture or principal-agent relationship between the parties, and neither party will have any right, power, or authority to create any obligation, express or implied, on behalf of the other in connection with performance of its obligations hereunder.

## 9.3 Severability; Waiver

If any provision of this Support Contract is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions will continue in full force without being impaired or invalidated in any way. The failure of either party to insist upon strict performance of any provision of this Support Contract, or to exercise any right provided for herein, shall not be deemed to be a waiver of the future enforcement of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

## 9.4 Notices

Any notice or communication permitted or required hereunder will be in writing and will be delivered by facsimile transmission with confirmation of receipt, in person or by courier, or mailed by certified or registered mail, postage prepaid, and addressed as set forth above or to such other facsimile number or address as either party may provide from time to time to the other. If notice is given in person, by courier, or by facsimile, it will be effective upon receipt; and if notice is given by mail, it will be effective three (3) business days after deposit in the mail.

## 9.5 Force Majeure

If performance of this Support Contract, or any obligation hereunder (other than the obligation to pay) is prevented, restricted, or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the non-affected party, will be excused from such performance to the extent of such prevention, restriction, or interference.

## 9.6 Assignment

No right or obligation of the Licensee under this Support Contract will be assigned, delegated, or otherwise transferred, whether by agreement, operation of law, or otherwise, without the express prior written consent of etamax. Any purported assignment, delegation, or transfer in violation of this paragraph will be null and void. Subject to the foregoing, this Support Contract in its entirety will bind each party and its permitted successors and assigns.

## 9.7 Amendments

Any amendments, modifications, supplements, or other changes to this Support Contract must be in writing and signed by duly authorized representatives of each party.

## 9.8 Entire Agreement

This Support Contract constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and supersedes all prior oral and written proposals, representations, or other communication related to the subject matter hereof.

In witness whereof, each of the Parties hereto has caused this agreement to be executed by its duly authorised officers or representatives.

Signed: ..... Dated:.....

Title: ESABASE2 Project Manager

for and on behalf of  
**etamax space GmbH**

Signed: ..... Dated:.....

Title: .....

for and on behalf of

.....  
 (Organisation/Company)