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## Section 1 Subject of Contract

In view of the degree of complexity, particularly because of the big data volume in the case of central data management, a regular check of the installed system is necessary that extends beyond simple software maintenance and service. The Contract partner entrusts Q-DAS<sup>®</sup> with the maintenance and service of the installed Q-DAS<sup>®</sup> software on the Contract partner's system.

This Contract does not include the update service for the Q-DAS<sup>®</sup> software or any services that are the subject of the software maintenance and service agreement to be signed separately according to the "Software Maintenance and Service Conditions for Telephone Support". Software updates are either covered by a valid maintenance agreement or have to be bought separately.

## Section 2 Scope of the Services

### *Maintenance and Service of the Q-DAS<sup>®</sup> Software*

The service agreement includes the support of the Contract partner by one or more Q-DAS<sup>®</sup> employees on the Contract partner's system. This can either be a direct service on site or, if possible from a technical and organisational point of view, a service through remote diagnosis or transfer of the data stock. A practical solution will be decided in each case by mutual agreement between Q-DAS<sup>®</sup> and the Contract partner.

If the service is provided at the Contract partner, travel costs and expenses are also incurred according to the current Q-DAS<sup>®</sup> price list.

Typical services covered by this agreement are:

- Checking the installed Q-DAS<sup>®</sup> components and their interaction
- Analysis of the Q-DAS<sup>®</sup> specific data stock content and correction of defective data stocks
- Improvement of the database
- Installation and commissioning of new components that are covered via a maintenance agreement or are newly acquired
- Conducting tests, in particular for checking the data flow
- The training of Q-DAS<sup>®</sup> product administrators or product managers on site in the newly installed components
- Integration of measuring devices via the on-line standard interface after a feasibility check
- Checking the data sources to make sure that they observe the Q-DAS<sup>®</sup> ASCII transfer format
- Supporting the Contract partner when agreeing the data format with measuring equipment manufacturers
- Improvement of the various configurations
- Allocation of rights and user management
- Adaptation of printouts, forms and screen masks

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- Documentation of the data stock installed
- Advising the Contract partner on all matters of use when operating the Q-DAS® software

All changes, adaptations and modifications are made in close liaison between the Contract partner and the Q-DAS® employee.

Q-DAS® undertakes to observe the guidelines in force at the Contract partner, particularly with regard to data protection.

### ***Request by the Contract partner***

The services to be performed in the individual case are agreed between the contract partners. The work is either done periodically or after call-off by the Contract partner.

The schedule for on-site deployment is agreed.

### **Section 3 Excluded from the Service**

The generation of software and the maintenance of computers, networks and other hardware are not the subject of this Agreement.

### **Section 4 Obligations of the Contract partner**

Maintenance and service can only be guaranteed if the Client uses the current program version. A contract partner with administrator rights and knowledge must be nominated for the software provided by the Contract partner. Handbooks and original accessories (cables, etc.) must be supplied for the hardware provided. Q-DAS® must agree to departures from these conditions.

### **Section 5 Fees, Secondary Costs and Due Dates**

1. The annual service charge for the minimum deployment days agreed is payable to Q-DAS®, irrespective of whether the Contract partner takes up the agreed minimum deployment time or not. If the Contract partner uses maintenance and service facilities that exceed the agreed minimum deployment time, the additional service is charged on the basis of the relevant Q-DAS® price list which is in force at the time when the service is performed and is published on the Homepage of Q-DAS®.
2. The services are charged according to daily rates plus any travel costs and expenses incurred. Q-DAS® documents the number of hours of the service performed.
3. The annual service charge for the minimum deployment days is payable in advance and will be invoiced at the beginning of the contractual year concerned. Other charges will be invoiced after completion. If the contract starts during the course of a calendar year, the service charge is invoiced on a monthly basis. Months that have started are treated as complete months.
4. Claims of Q-DAS® become due immediately on invoicing, without deduction. Payments must be made free of charge to one of the accounts of Q-DAS®. If the Contract partner is in arrears with his payment obligations, Q-DAS® is entitled to charge interest at the rate of 8% above the relevant base interest rate for the part of his claims in arrears.

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5. All prices are plus the relevant statutory VAT. The relevant Q-DAS<sup>®</sup> price list, which is in force at the time when the service is performed and is published on the Internet Homepage of Q-DAS<sup>®</sup>, [www.q-das.de](http://www.q-das.de), is used as the basis for calculating the daily rate, travel costs, expenses or other services commissioned. Q-DAS<sup>®</sup> is entitled to adjust the prices for its payment claims according to the cost trend. Q-DAS<sup>®</sup> will publish such price changes on its Internet Homepage [www.q-das.de](http://www.q-das.de). Q-DAS<sup>®</sup> may refer the Contract partner to this change by e-mail. The price change is deemed to be agreed if the Contract partner does not refute the change within four weeks from publication on the Internet Homepage of Q-DAS<sup>®</sup> in written or electronic form. The rejection period is reduced to two weeks from receipt of the e-mail if Q-DAS<sup>®</sup> has informed the Contract partner about the price change by e-mail. If the Contract partner rejects this within the prescribed period, Q-DAS<sup>®</sup> is entitled to terminate the Contract without notice when the current contractual period expires.
6. The Contract partner has no right of offset or retention according to § 273 BGB unless the Contract partner's claims are recognised or legally established.
7. Q-DAS<sup>®</sup> reserves title to all supplies if they are movables (data carriers, documentation, etc.) until payment in full of all present and future claims of Q-DAS<sup>®</sup>, including all secondary claims arising from this Contract. The reservation of title of Q-DAS<sup>®</sup> lapses when these claims are settled in full.
8. On request, Q-DAS<sup>®</sup> will submit to the Contract partner an all-inclusive daily rate, including travel costs and expenses, if the deployment of Q-DAS<sup>®</sup> is wanted for a specifically specified site.

## Section 6 Start and Life of the Contract

1. The Contract starts on the date of receipt by Q-DAS<sup>®</sup> of the contract copy signed by the Contract partner and runs from then until the 31.12. of the next year but one. It may be terminated at this time for the first time subject to three months' notice. If the Contract is not terminated, it is extended by twelve months in each case. The notice is still three months after the extension concerned.
2. The special right of termination of Q-DAS<sup>®</sup> according to Section 5 para. 5 is unaffected.
3. Any notice must be given in writing; text transmission, fax, e-mail or similar forms of communication satisfy the written form requirement.

## Section 7 Extraordinary Termination

1. Both contract partners are entitled to terminate the Contract without notice if a contract partner cannot be expected to adhere to the Contract following a serious infringement of the Contract by the other contract partner.
2. The following reasons apply, but not exclusively, as a reason for extraordinary termination:

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For the Contract partner,

if Q-DAS<sup>®</sup> has not performed the services owed according to this Contract, in spite setting a period and granting an extension in writing, if the periods added together from the beginning of the Contract are at least four weeks and Q-DAS<sup>®</sup> has not started the maintenance services within the extended period.

for Q-DAS<sup>®</sup>,

- a. if, in spite of repeated reminders, the Contract partner has not made the payments due according to this Contract and is in arrears with an amount that reaches or exceeds € 1,000; this also applies if the Contract partner is in arrears with smaller amounts arising from several invoices of Q-DAS<sup>®</sup> but whose total reaches or exceeds € 1,000;
  - b. if the Contract partner refuses to perform services whose content and time-scale were agreed previously without reason.
3. The Contract partner who makes an extraordinary termination of the Contract bears the burden of proof of the existence of the reasons for the extraordinary termination.
  4. If the Contract partner was justified in making the extraordinary termination, he can demand from Q-DAS<sup>®</sup> the refunding of the part of the annual service fee which has not been used by the services already performed by Q-DAS<sup>®</sup> within the scope of this Contract.
  5. If Q-DAS<sup>®</sup> was justified in the extraordinary termination of the Contract, the claim of Q-DAS<sup>®</sup> for payment of the services already performed remains. However, the Contract partner must at least make the payment for the current contract period, at the end of which termination can be made for the first time or regularly within the specified period, on the basis of the minimum deployment days agreed. The right of Q-DAS<sup>®</sup> to claim further compensation is not affected.

## Section 8 Liability - Limitation

1. Q-DAS<sup>®</sup> is only liable for any consequential damages, irrespective of the legal reason, in the event of wilful intent or gross negligence, unless the claims result from a slight negligent infringement of essential contractual obligations. In all cases, the liability is limited to typical, foreseeable damage and to twice the annual maintenance charge without VAT at the most. Liability for atypical or unforeseeable damage is excluded.
2. Q-DAS<sup>®</sup> is only liable for incapacity in the event of infringement of essential contractual obligations. Liability in this respect is limited to simple, foreseeable damage and to twice maintenance charge without VAT at the most. Liability for atypical or unforeseeable damage is excluded.
3. For claims arising from delay and impossibility, Q-DAS<sup>®</sup> is liable, in terms of reason and amount, without limitation if its legal representatives or management employees are guilty of wilful intent or gross negligence. In addition, Q-DAS<sup>®</sup> is only liable in terms of reason for claims arising from delay and impossibility in the event of culpable infringement of essential

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contractual obligations and outside essential contractual obligations, in terms of reason, also for gross negligence of simple agents unless Q-DAS<sup>®</sup> can exempt itself from this by virtue of commercial usage. In the cases of Section 8 para. 3 sentence 2, Q-DAS<sup>®</sup> is only liable in terms of amount for compensation of typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount which the insurer of Q-DAS<sup>®</sup> has to pay in respect of this claim. Liability for atypical or unforeseeable damage is excluded.

4. For any claims arising from infringement-related liability, Q-DAS<sup>®</sup> is liable in terms of reason and for full amount of the damage for its own wilful intent and own gross negligence; the same applies to legal representatives and management employees. Also, Q-DAS<sup>®</sup> is only liable in terms of reason in the event of culpable infringement of essential contractual obligations and outside essential contractual obligations, in terms of reason, also for gross infringement of simple agents unless Q-DAS<sup>®</sup> can exempt itself by virtue of commercial usage. In the cases of Section 8 para. 4 sentence 2, Q-DAS<sup>®</sup> is liable in terms of amount only for compensation for typical foreseeable damage; however, in these cases, compensation is limited to the amount which the insurer of Q-DAS<sup>®</sup> has to pay in respect of this claim. Liability for atypical or unforeseeable damage is excluded.
5. The above liability limitations do not apply to personal injury that is based on wilful intent, gross negligence and damage based on the absence of guaranteed properties and also to damage arising from the infringement of copyrights of third parties or claims arising from statutory legal regulations of product liability law.
6. Q-DAS<sup>®</sup> is not liable for damage that could have been avoided through correct data back-up if Q-DAS<sup>®</sup> has clarified the need for and extent of data back-up.
7. Q-DAS<sup>®</sup> is not liable beyond the scope described above.
8. Any claims of the Contract partner arising from this Contract, in particular those relating to the remedying of defects or compensation, lapse six months after their occurrence in terms of the reason.

## Section 9 Force Majeure

Force majeure events, which essentially make the service difficult or impossible for Q-DAS<sup>®</sup> entitle Q-DAS<sup>®</sup> to extend the performance of the contractual obligations by the duration of the impediment and by a reasonable lead-time. Strikes and similar circumstances that affect Q-DAS<sup>®</sup> directly or indirectly are equivalent to force majeure.

## Section 10 Miscellaneous

1. The law of the Federal Republic of Germany shall apply exclusively.
2. Should a clause of the Contract be ineffective or become ineffective in the future, the Contract otherwise remains effective; the Contract partner and Q-DAS<sup>®</sup> hereby accept an interpretation of the ineffective clause that best reflects the economic aim and purpose of this clause and is effective.
3. This Contract includes all the agreements that the Contract partners have made; additional or different agreements to this Contract, its cancellation or termination must be in writing to be effective (cf. Section 6 para. 3 ).

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4. The Contract partner may only assign the claims relating to this Contract with the consent of Q-DAS®.
5. Order acknowledgements or terms of business of the Contract partners with conditions other than these “Software Maintenance and Service Conditions for Telephone Support“ are not accepted by Q-DAS®. The Contract partner accepts the validity of these conditions on acceptance of the first service of Q-DAS® in connection with this Contract at the latest. Otherwise, the valid “General Conditions of Use for Software Products“ of Q-DAS® apply.

## **Section 11 Place of Performance – Place of Jurisdiction**

1. If disputes occur between the parties, the Contract parties will try to settle these amicably first of all.
2. The place of performance and jurisdiction for all rights and claims arising from this Contract is Weinheim/ Bergstrasse (Germany). This agreement concerning the place of jurisdiction and place of performance only applies in respect of merchants, bodies corporate according to public law or separate assets according to public law and also contract parties who move their domicile or usual place of residence out of the Federal Republic of Germany after the Contract is signed or whose domicile or normal place of residence is not known at the time when the suit is filed.