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Section 1 Subject of Contract

Q-DAS® accepts responsibility for the maintenance, service and updating of the software listed in the maintenance quotation and agreement. On counter-signing the maintenance quotation, the Contract partner enters into a maintenance agreement with Q-DAS® according to the present maintenance and service conditions.

Section 2 Scope of Services

The services covered by the all-inclusive maintenance charge include:

1. Updating (Software Maintenance)

- a. General program care, including sending the latest version of the standard version of the software provided under the purchase agreement. As a rule, only the latest version of the software is serviced, but not a software version which is older than 24 months from the time of its initial release by Q-DAS®.
- b. Debugging: Elimination of errors for which Q-DAS® is responsible in the software product to be maintained and in the documentation supplied if they essentially limit or essentially reduce the value or fitness for purpose according to the purchase agreement.
- c. Supply of updates for the program version that is the subject of the Contract, including the corresponding documentation, where appropriate with the latest program installation data carriers. The installation itself is not an integral part of maintenance and is the responsibility of the contract partner.
- d. Implementation of further developed program functions of the program version that is the subject of the Contract.
- e. Telephone support of the qualified persons (key users) conversant with the software appointed by the contract partner in the event of acute application problems (Monday – Friday, 8:00 to 17:00 h). See below (Section 2 2. Software Service) for further details
- f. Sending or adapting existing documentation.
- g. Adapting the software that is the subject of the Contract to new operating system levels within six months following release of the new operating system level by the manufacturer.

2. Software Service


Software service within the scope of this agreement only covers telephone (hotline) and written support on all matters connected with installation and handling of the current Q-DAS® software that is the subject of the Contract to a reasonable extent.

Software service does not replace any training from a technical point of view (e.g. knowledge of statistics or handling computers and operating systems), but is merely a support with regard to specific individual questions on software by persons acquainted with the software.

Hard or soft copy enquiries are answered within a reasonable period, usually within 12 hours on working days, by telephone or in writing, as required.

The hotline is manned from Monday to Friday from 8:00 to 17:00 h, if these are working days at the place of business of Q-DAS®.

If a “First Level Support” contract was concluded separately in writing, then the reaction and availability periods determined in the contract apply.


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3. Place of Performance

The annual maintenance charge is calculated on the basis that services by Q-DAS® are basically performed at Q-DAS® offices by remote diagnosis and maintenance. If remote maintenance is not possible, or if the Contract partner requires services to be performed according to Section 2 of this Contract at the system installation site, the necessary hours and also travel and accommodation costs are also charged according to the current price list.

Section 3 Excluded from the Service

1. Services not expressly listed in Section 2 are not the subject of the service obligation of Q-DAS®. In particular, but not exclusively, the following services are excluded from the service obligation:
 - a. The generation of software and the maintenance of computers, networks and other hardware are not the subject of this Contract. Enquiries concerning the operating system, other software and hardware are not the subject of the contract either. If the contract partner changes the software according to the maintenance quotation and contract without agreement with Q-DAS®, this no longer falls within the Contract.
 - b. The remedying of program malfunctions and other faults – irrespective of the type – which are the consequence of failure to observe the documentation, operating instructions, predetermined conditions of use or the system conditions defined for the program or the use of unqualified employees by the Contract partner.
 - c. The remedying of program malfunctions and other faults – irrespective of the type – that have been caused by the intervention of the Contract partner, e.g. programming intervention in the program out of the area of responsibility of the Contract partner, adding extraneous program parts or program functions.
 - d. Maintenance of program parts that are not an integral part of the program version that is the subject of the Contract or whose function is dependent on other programs.
 - e. Updating of the program if the Contract partner has infringed against Section 4 para. 3.
 - f. Program malfunctions that are attributable to hardware faults,
 - g. Advice and support of the Contract partner or his employees – including by telephone – that is necessary on account of lack of basic knowledge or training omissions.
2. If services are not an integral part of this Contract, Q-DAS® offers the following services for a separate consideration according to the price list:
 - Installation of the software
 - Training in the software
 - Training in technical questions
 - Maintenance of software specially made for the Contract partner or modification of the standard module, in particular the adaptation of the new or improved program levels to such software.


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- Advice at the Contract partner on all matters of use or application of the software including passing on experience of use and application from the entire user group
- Remedying faults caused by incorrect operation
- Elimination of faults for which Q-DAS® is not responsible
- Adaptation of printers, forms and screen masks, etc.

The Contract partner must order these services from Q-DAS® either in writing or electronically.

Section 4 Obligations of the Contract Partner

1. The Contract partner will operate the software using trained employees according to the operating instructions, application documentation and other instructions from Q-DAS® and refrain from any intervention which can cause malfunctions.
2. The Contract partner will support Q-DAS® free of charge in the search for a fault and its limitation by providing the necessary information on the malfunctions found through an employee (key user) fully acquainted with the hardware and software used. The Contract partner undertakes to notify any faults that occur in the software and documentation in writing or electronically immediately. In this case, the faults must be described as accurately as possible by providing existing documentation of all kinds that is suitable for illustrating the fault. If necessary, the data causing the faults must be provided on data carriers or by e-mail for test purposes. If Q-DAS® employees dial in to the computer network of the Contract partner at the request of the Contract partner for the purposes of remote diagnosis, the corresponding special agreements must be made first concerning the nature, scope and costs for this action. At the request of Q-DAS®, the Contract partner uses the fault report form provided by Q-DAS® for reporting the fault.
3. On principle, the Contract partner is obliged continuously to transfer to his system the further developed versions of the program that is the subject of the Contract and its functions, fault corrections and changes in order to keep it at the latest development level. Maintenance and service can only be granted if the Contract partner is using the current program version. Q-DAS® supplies this to the Contract Partner free of charge according to Section 2. The Contract partner must actively use this program version 6 months at the latest from the time of its release. If, when the Agreement is signed, the Contract Partner is in possession of a version that is older than 24 months relative to its initial release by Q-DAS® or, during the validity of this contract, exceeds 24 months relative to its initial release by Q-DAS®, it is longer serviced. In this case, the Contract partner must acquire an update to the latest version at the time when the Agreement is signed, according to the Q-DAS® price list.
4. The Contract partner is obliged to perform a continuous data back-up to ensure restoration at any time of the software and data level which existed before a system crash or other malfunction occurred. Q-DAS® is not liable for damage caused by the fact that the Contract partner has not performed this data back-up, or not correctly, if Q-DAS® has clarified the need for and the scope of data back-up.


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Section 5 Charges, Secondary Costs and Due Dates

1. The maintenance charge is paid in advance and is invoiced at the beginning of the contract year; other payment claims are invoiced after the service has been performed. If the Contract starts during the course of a calendar year, the annual charge is calculated on a monthly basis; months that have started are regarded as whole months.
2. Claims by Q-DAS[®] are payable within 30 days without deduction. Payments must be made to one of the accounts of Q-DAS[®] free of charge. If the Contract partner is in arrears with his payment obligations, Q-DAS[®] is entitled to charge interest at the rate of 8 percentage points above the base interest rate of the European Central Bank for the part of its claims in arrears.
3. All prices are plus the statutory VAT.
4. All the services according to Section 2 are included in the charge. The charge is fixed for at least a year. Q-DAS[®] is entitled to adjust the prices for its payments in line with cost trends. Q-DAS[®] will publish these price changes by e-mail to the Contract partner. The price change is deemed to be agreed if the Contract partner does not terminate the agreement to the end of the current contract period within four weeks after receiving the e-mail.
5. The changed prices apply to charges payable in advance annually according to this Contract with effect from the following contract year and for other recurrent claims, from the time from which the Contract partner uses such a service after the price change comes into force.
6. If the Contract partner requires services according to Section 3 of this Contract or the use of Q-DAS[®] employees on site, the necessary hours and travel and accommodation costs are also charged according to the valid Q-DAS[®] price list.
7. 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.
8. Q-DAS[®] reserves title to all supplies if they are movables (data carriers, documentation, etc.) until all present and future claims of Q-DAS[®], including all secondary claims arising from this Contract, have been paid in full. The reservation of title of Q-DAS[®] lapses when these claims are paid in full.

Section 6 Start and Life of Contract

1. The Contract starts with the first day of the month which follows the receipt of the copy of the Contract countersigned by the Contract partner and is valid from that date for 12 months. It can be terminated for the first time at that time, subject to three months' notice. If the Agreement is not terminated, the Agreement is extended by another twelve months. The period of notice is also three months after an extension.

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2. The special termination right of the Contract partner according to Section 5 para. 4 remains unaffected.
3. Each termination must be made in writing. Text transmission, fax, e-mail or similar communication forms 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 reasonably expected to maintain the agreement on account of serious infringement of the Agreement by the other contract partner.
2. The following are valid in particular as a reason for extraordinary termination

For the Contract partner,

- a. if Q-DAS[®] does not perform the agreed maintenance obligations, in spite of setting a period and an additional period in writing, if the periods added together from the time when the delay starts equal at least four weeks and Q-DAS[®] has not started the maintenance services within the additional period granted.
- b. if Q-DAS[®] fails to eliminate a malfunction of the software that is the subject of the Contract in a period of six weeks from the start of work of remedying the defect;


for Q-DAS[®],

- a. if the Contract partner fails to make the payments to be made according to this Agreement in spite of a repeated reminder and is in arrears with an amount that reaches or exceeds € 1,000; the same applies if the Contract partner is in arrears with smaller amounts from several Q-DAS[®] invoices whose total reaches or exceeds € 1,000;
 - b. if the Contract partner refuses the performance of the maintenance work although this is necessary for maintaining the ability of the software to function.
3. The Contract partner who makes extraordinary termination of the Contract has to prove the existence of the reasons for extraordinary termination.
 4. If the Contract partner was justified in the extraordinary termination, he can demand the refunding on a monthly basis of the annual maintenance charge from Q-DAS[®].
 5. If Q-DAS[®] was justified in terminating the Agreement, the claim of Q-DAS[®] for the maintenance charge for the current contract period on whose expiry the Agreement can be terminated for the first time or regularly according to the time specified, is not limited. The right of Q-DAS[®] to claim further compensation is not affected.

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Section 8 Liability - Limitation

1. For any consequential damages – irrespective of the legal grounds - Q-DAS® is only liable in the event of wilful intent or gross negligence, unless the claims resulted from a slightly negligent infringement of essential contractual obligations. In all cases, the liability is limited to typical, foreseeable damage. Liability for atypical or unforeseeable damage is excluded.
2. Q-DAS® is only liable for incapacity if essential contractual obligations are infringed. The liability is limited in this connection to typical foreseeable damage. Liability for atypical or unforeseeable damage is excluded.
3. For claims arising from delay and impossibility, Q-DAS® is liable without limitation in terms of reason and amount if its legal representatives or management employees are guilty of wilful intent or gross negligence. In addition, Q-DAS® is only liable for claims arising from delay and impossibility in terms of reason in the event of a culpable infringement of essential contractual obligations; outside essential contractual obligations, in terms of reason, it is also liable for gross infringement of simple agents unless Q-DAS® can exempt itself by virtue of commercial usage. In the cases according to Section 8 para. 3 sentence 2, Q-DAS® is liable, in terms of amount, only for compensation for typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS® has to pay in respect of this claim.
4. For any claims arising from infringement-related liability, Q-DAS® is liable, in terms of reason and full amount, for its own wilful intent and gross negligence. The same applies to legal representatives and management employees. Also, in terms of reason, Q-DAS® is only liable for culpable infringement of essential contractual obligations; outside essential contractual obligations, in terms of reason, it is also liable for gross negligence of agents unless Q-DAS® can exempt itself from this by virtue of commercial usage. In the cases of Section 8 para. 4 sentence 2, Q-DAS® is liable, in terms of amount, only for compensation for typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS® has to pay in respect of this claim.
5. The above liability limitations do not apply to personal injury that is based on wilful intent, gross negligence and damage that is based on the lack of guaranteed properties and also for damage arising from the infringement of copyrights of third parties or for claims arising from mandatory legal regulations of product liability law.
6. Q-DAS® is not liable for damage that could have been prevented by correct data back-up if Q-DAS® has clarified the need and scope of data back-up.
7. Q-DAS® is not liable beyond the scope described above.
8. Any claims of the Contract partner arising from this Contract, in particular those relating to non-performance or compensation, lapse twelve months after their occurrence in terms of reason.

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Section 9 Force Majeure


Events of force majeure, which essentially make the service of Q-DAS® difficult or impossible, entitle Q-DAS® to postpone the contractual obligations by the period of the impediment and by a reasonable lead-time. Strikes and similar circumstances affecting Q-DAS® directly or indirectly are equivalent to force majeure.

Section 10 Miscellaneous

1. The law of the Federal Republic of Germany applies exclusively. If, for reasons of the Conflict of Laws, the application of a non-German legal system should come into consideration; by signing the Contract incorporating these “Software Maintenance and Service Conditions for Telephone Support”, the Contract partners agree to the exclusive application of the law of the Federal Republic of Germany.
2. The Contract partners have the mutual right of retention and offset only if the claim is based on this Contract (counter-claims or offset to claims) and the counter-value or offset to claims value are undisputed or legally established.
3. 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® hereby agree on an interpretation of the ineffective clause which best reflects the aim and purpose of this clause and is effective.
4. The Contract concluded between the Contract partners including these “Software Maintenance and Service Conditions for Telephone Support”, contains all the agreements that the contract partners have made; additional or different agreements in respect of this Contract, its cancellation or termination and all explanations regarding its validity or an issue must be made in writing to be effective; text transmission, fax, e-mail or similar forms of communication meet the written form requirement.
5. The Contract partner may only assign claims against this Contract with the consent of Q-DAS®.
6. Order acknowledgements or terms of business of contract partners with conditions other than these “Software Maintenance and Service Conditions for Telephone Support“ are valid in addition to these conditions as long as they are not contradictory. The Contract partner accepts the validity of these conditions on acceptance of the first service by Q-DAS® within the scope of this Contract at the latest. Otherwise, the current “General Conditions of Use for Software Products“ of Q-DAS® apply.
7. The current “Software Maintenance and Service Conditions for Telephone Support“ of Q-DAS® apply; amendments are published on the website of Q-DAS® (www.q-das.de). Q-DAS® will inform the Contract partner by E-mail of the changes made to the “Software Maintenance and Service Conditions for Telephone Support“; these changes become the content of the existing Contract with the Contract partner unless he refutes the validity of the amended “General Conditions of Use for Software Products“ in writing within three weeks after receipt of the E-mail, not later than three months after the publication of the revision / amendment on the Q-DAS® website

Section 11 Place of Performance – Place of Jurisdiction

1. If disputes occur between the parties, the Contract partners will try to settle these amicably in the first instance.

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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 performance only applies in respect of merchants, bodies corporate according to public law and separate assets according to public law and contract parties who move their domicile or usual place of residence out of the Federal Republic of Germany or their domicile or usual place of residence is not known at the time when the suit is filed.