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1. Scope of Services

The Contractor is responsible for the maintenance, support and the Update of the software specified in the maintenance offer.

- 1.1 Delivery of the latest standard version of the software purchased within the scope of the sales contract. Only the latest version of the software shall be maintained, however, software versions older than 36 months referring to their first release by Q-DAS® shall be excluded from maintenance.
- 1.2 Elimination of errors attributable to the Contractor occurring in the software product to be maintained or in the provided documentation in case these errors compensate or considerably reduce the value or the efficiency of the application guaranteed in the sales contract.
- 1.3 Providing changes for the currently installed software version, (including a physical copy of the latest program installation, if applicable), if updates are required due to major changes in legal or other binding requirements.
- 1.4 Updating and providing available documentation.
- 1.5 The software support in terms of the maintenance and service shall only include support by telephone (hotline) or in written form responding to all questions arising from the installation or handling of the currently valid Q-DAS® software, however, support shall only be provided to a reasonable extent.
- 1.6 The software support shall only assist a previously determined user (key user) in specific individual questions about the software. Questions that are subject to training classes or manuals shall not be supported.
- 1.7 Written inquiries shall be answered by telephone or in writing according to requirements within an appropriate period. The maximum response time amounts to 1.5 work days.
- 1.8 The hotline is available from Monday to Friday from 8 A.M. to 5 P.M. local time of the Hotline office.
- 1.9 In case a "first level support" agreement is available in writing, the response time and availability regulated therein shall apply.
- 1.10 The annual maintenance fee is calculated based on the assumption that Q-DAS® services shall generally be performed at the Q-DAS® headquarters via remote diagnostics and remote maintenance. In case remote maintenance is not feasible and the Customer demands the supply of services on-site of the system installation, the expenditure of time and the travel expenses therefore shall be paid according to the respective valid price list.

2. Exclusion of Benefits

- 2.1 This regulation shall not be subject to the development of software or the maintenance of computers. Equally, any inquiries concerning the operating system and any other software and/or hardware shall not be supported. Changes to the software covered by the maintenance offer that were done by or on behalf of the Customer without consulting the Contractor shall be excluded from the regulation. Errors or problems caused by changes to the existing structure of the data technology environment shall be excluded.
- 2.2 The following services are not included in this maintenance offer. However, these services are available at cost to the Customer, according to the valid price list:

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- a) Installation of the software.
- b) Data transfer (if required).
- c) Introduction into the software.
- d) Training in subject-specific matters.
- e) Advice at the Customer's facility on any question about the use or application of the software as well as on operating experience and application know-how gained from all users.
- f) Correction of defects caused by operating errors.
- g) Elimination of errors which Q-DAS® is not liable for.
- h) Adaptation of printers, reports and screen masks etc.

The services listed above need to be ordered by the Customer separately from this maintenance offer and in writing from Q-DAS®.

3. Start and Duration of the Maintenance Contract and Software Service


Maintenance and software service shall start at the first day of the month following the maintenance order with a duration of 12 months. It shall be renewed for another 12 months if it is not terminated by the Contractor or Customer at the end of the current maintenance period with three months' notice. The right to extraordinary termination, including without notice, for reasons of infringement of essential contractual obligations, is not affected.

4. Guarantee

- 4.1 For the maintenance period, the Contractor shall guarantee that the maintenance support deliverables according to section 1 (Scope of Services) do not contain any errors which considerably reduce their value or efficiency.
- 4.2 The Contractor shall be obliged to eliminate occurring errors in a reasonable period. In case the Contractor does not fulfill their obligation to remedy defects in a reasonable period, the Customer shall be entitled to make a claim to reduce payments or to terminate the maintenance without notice. For claims of damages, section 6 shall apply (Liability and Damages).
- 4.3 The Contractor shall be obliged to ensure that any data provided by the Contractor is inaccessible to third parties on respective request.

5. Obligations of the Customer

- 5.1 Maintenance and support can only be guaranteed if the latest program version is in use by the Customer.
- 5.2 The Customer shall be obliged to promptly inform the Contractor in writing about errors occurring in the software and documentation. The errors shall be described as precisely as possible by adding any kind of available documentation helping to illustrate the error. If required, the Customer shall provide the data causing the error on a data carrier or by e-mail for testing purposes. In case an employee of the Contractor logs on to the computer network of the Customer for remote diagnostics, special agreements shall be made.

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5.3 It is recommended to maintain all purchased Q-DAS[®] software products.

6. Liability and Damages


- 6.1 The Contractor guarantees maintenance and support in all good conscience and to the best of their knowledge.
- 6.2 The Contractor is liable for maintenance services, however, the compensation claim is limited to the amount of fees and additional costs which have been paid during one maintenance period for the program affected by or causing the damage, irrespective of the legal basis. The fees and surcharges valid at the time of occurrence of the damage provide the basis for compensation claims.
- 6.3 The Contractor is not liable for loss of profit, absent savings, indirect damages and consequential damages. The Contractor is only liable for the recovery of data in case the Customer has guaranteed that this data is reproducible in terms of proper data processing in electronic format.
- 6.4 The above liability limitations do not apply to personal injury, nor to damages caused due to willful intent, gross negligence, the absence of guaranteed properties, copyright infringement of third parties, nor for any claims arising from mandatory legal regulations of product liability law.

7. Force Majeure

Force majeure events that render the service of the Contractor difficult or impossible entitle the Contractor to postpone the fulfillment of the contractual obligations for the duration of the event and with a reasonable lead-time. Strikes and similar circumstances that affect the Contractor directly or indirectly are equivalent to force majeure.

8. Fees, Additional Costs and Times for Payment

- 8.1 The Customer must pay the maintenance fee in advance and is invoiced at the beginning of the respective maintenance period. Any other payment claims shall only be invoiced after servicing. The maintenance fee satisfies any service according to section 1 (Scope of Services). The fee shall be fixed for at least 1 year. Q-DAS[®] is entitled to adjust prices for their payment claims to the development of costs. Q-DAS[®] is to inform the Customer about such price changes by e-mail. The price changes shall be regarded as agreed if the Customer does not terminate the maintenance to the end of the current maintenance period subject to four weeks' notice after receiving the e-mail. The extent of the price adjustment shall comply with the price increase customary in the trade.
- 8.2 The Customer shall cover any travel expenses due to providing maintenance services according to section 2 (Exclusion of Benefits) or due to the refusal of remote diagnostics. The Customer shall request a respective site visit of a Contractor's employee in writing.
- 8.3 Fees and additional costs are exclusively specified without VAT for Customers entitled to deduct pre-tax.
- 8.4 The Customer has no right of offset or retention unless the Customer's claims are accepted or legally established.

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8.5 If the Customer is more than 14 days in arrears with his payment obligations, the Contractor shall be entitled to suspend the obligations arising from this regulation until payment has been made in full.

9. Miscellaneous

- 9.1 Should a clause of this agreement be ineffective or become ineffective in the future, the Contract and these conditions otherwise remain effective. The Contract partner and Q-DAS[®] hereby agree to an interpretation of the ineffective clause which best reflects the economic aim and purpose of this clause, and is effective.
- 9.2 This Contract contains all the agreements that the contract parties have made taking into account these “General Terms and Regulation for Software Maintenance and Hotline”; additional or different agreements in respect of this Contract, its cancellation or termination must be made in writing to be effective; text transmission, fax, e-mail or similar forms of communication meet the written form requirement.
- 9.3 The Contract partner may only assign claims relating to this Contract with the consent of Q-DAS[®].
- 9.4 The Contract partners reciprocally have a right of retention or set-off if their claims are based on this Contract and only if their claims are undisputed or legally established.
- 9.5 These “General Terms and Regulation for Software Maintenance and Hotline “ apply exclusively. Order acknowledgements or terms of business of the Contract partners with conditions other than these “General Conditions of Use for Software Products“ 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.

10. Place of Performance – Place of Jurisdiction and Governing Law

- 10.1 If disputes arise between the parties, the contract partners will try to settle these amicably.
- 10.2 The place of performance and the place of 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 to merchants, bodies corporate according to public law or separate assets according to public law and contract parties who, after signing the Contract, move their domicile or normal place of residence out of the Federal Republic of Germany or their domicile or normal place of residence is not known at the time when the suit is filed.
- 10.3 The law of the Federal Republic of Germany applies exclusively. The regulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or any other agreements on the unification of international sale or business transaction are not applicable.