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# Service Conditions of Q-DAS GmbH

## Section 1 Subject of the Contract

In view of the degree of complexity, in particular because of the high data traffic in case of central data storage, a regular inspection of the installed system is required extending simple software maintenance and service. The Contract partner entrusts Q-DAS® with the maintenance and service of the installed Q-DAS® software on the Contract partner's system.

This Contract does not include the update service for Q-DAS® software or any services that are the subject of the software maintenance and service agreement to be signed separately referring to the "Software Maintenance and Service Conditions for Telephone Support". Software updates either are provided by signing a valid maintenance agreement or must be purchased separately.

## Section 2 Scope of Services

### *Maintenance and Service of the Q-DAS® Software*

The service agreement includes the support of the Contract partner by one or more Q-DAS® employees on the Contract partner's system. This can either be a direct service on site or, if technically and organizationally feasible, 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® and the Contract partner.

If the service is provided at the Contract partner, additional travel costs and expenses according to the current Q-DAS® price list are incurred thereby.

Typical services covered by this Contract are:

- Inspecting the installed Q-DAS® components and their interaction
- Analyzing Q-DAS® specific database contents and correcting defective data stocks
- Optimizing the data stock
- Installing and commissioning new components covered by a maintenance agreement or newly acquired
- Conducting tests, in particular for inspecting the data flow
- Providing trainings in the newly installed components offered by Q-DAS® product administrators or product managers on site
- Integrating measuring instruments via on-line standard interface after feasibility study
- Testing data sources for compliance with the Q-DAS® ASCII transfer format
- Supporting the Contract partner in consulting the manufacturers of measuring instruments about the data format
- Optimizing various configurations
- Allocating rights and administering users
- Adopting printouts, forms and screen masks

- Documenting the data stock installed
- Advising the Contract partner on all matters of use referring to the application of Q-DAS® software

The Q-DAS® employee will make all changes, adaptations and modifications in close consultation with the Contract partner.

Q-DAS® is obliged to observe the current regulations of the Contract partner, in particular with regard to data protection.

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

The services to be performed in each individual case are agreed upon between the Contract partners. The service is either offered periodically or when demanded by the Contract partner.

The schedule for on-site operations must be arranged.

## **Section 3 Exclusion of Services**

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

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

Maintenance and service can only be guaranteed if the Client uses the current software version. Q-DAS® requires a contact person with administrator rights and knowledge of the software applied by the Contract partner. Where required, manuals and original accessories (cables, etc.) must be provided for the applied hardware. Q-DAS® must agree to any terms deviating from these maintenance and service conditions.

## **Section 5 Charges, Additional 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 makes use of the agreed minimum deployment time or not. If the Contract partner uses maintenance and service offers that exceed the agreed minimum deployment time, the additional service is charged based on the respective Q-DAS® price list valid at the time the service is provided and published on the Q-DAS® website.
2. The services are charged on the basis of daily rates plus any travel costs and expenses incurred. Q-DAS® documents the required time for the service performed.
3. The annual service charge for the minimum deployment days is payable in advance and an invoice will be issued at the beginning of the contractual year concerned. Other fees will be invoiced after completion of the respective service. If the contractual relationship starts in the course of a calendar year, the service charge is invoiced on a monthly basis. Each month commenced is treated as entire month.
4. Claims of Q-DAS® are payable immediately on invoice without deduction. Payments must be made to one of the Q-DAS® accounts free of charge. If the Contract partner is in arrears with his payment obligations, Q-DAS® is entitled to charge interest at the rate 9 percentage points above the relevant base interest rate for the portion of his receivables in arrears.
5. All prices include the relevant statutory VAT. The relevant Q-DAS® price list valid at the time the service is performed and published on the Q-DAS® website [q-das.com](http://q-das.com) forms the basis for billing the daily rate, travel costs, expenses or other services commissioned. Q-DAS® is entitled to adjust the prices for its payment claims according to the cost trend. Q-DAS® will publish such price changes on its website [q-das.com](http://q-das.com). Q-DAS® can refer this change to the Contract either by e-mail,

fax or by letter. Acceptance of the validity of the price change is deemed to be given if the Contract partner has not refuted the price change within four weeks from publication on the Internet website of Q-DAS® in written form or electronically. The period of refusal is reduced to two weeks from receipt of the information if Q-DAS® has informed the Contract partner either by e-mail, fax or by letter about the price change. If the Contract partner protests within the set period, Q-DAS® is entitled to terminate the Contract at the end of the current contractual period without having to observe a period of notice.

6. The Contract partner has no right of offset or retention according to paragraph 273 BGB unless the Contract partner's claims are explicitly accepted or legally established.
7. Q-DAS® reserves title to the supplies if they are movables (data carriers, documentation, etc.) until all current and future claims of Q-DAS® have been paid, including all secondary claims arising from this Contract. The retention of title of Q-DAS® lapses when these claims are settled in full.
8. On request, Q-DAS® will submit to the Contract partner an all-inclusive daily rate, including travel costs and expenses, if the deployment of Q-DAS® is wanted for a particularly specified site.

## **Section 6 Start and Life of the Contract**

1. The Contract starts on the date of receipt by Q-DAS® of the contract copy signed by the Contract partner and runs from then until the 31.12. of the year after next. 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 respectively by twelve months. The notice is still three months after the extension concerned.
2. The special right of termination of Q-DAS® according to section 5, para. 5 is unaffected.
3. Termination must be served 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. Significant reasons for an extraordinary termination would be in particular, but not exclusively:  
For the Contract partner,  
if Q-DAS® 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® has not started the maintenance services within the extended period.  
For Q-DAS®,
  - 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® 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 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® that has not been taken up by Q-DAS® in the form of provided services as agreed within the scope of this Contract.
5. If Q-DAS® was justified in terminating the Contract, the payment claim of Q-DAS® for already provided services remains in place. The claim of Q-DAS® at least for the maintenance charge for the current contract period on whose expiry the Contract 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. Any claims for damages by Q-DAS® in excess thereof shall remain unaffected.

## **Section 8 Liability - Limitation**

1. In the event of any consequential damages, for whatever legal reason, Q-DAS® is only liable in the event of willful intent or gross negligence, unless the claims result from a slightly negligent infringement of essential contractual obligations. In these cases, the liability is limited to the typical, foreseeable damage and to twice the annual service charge without VAT at the most. Liability for atypical or unforeseeable damage is excluded.
2. Q-DAS® is liable for incapacity only if essential contractual obligations are infringed. The liability in this respect is limited to typical, foreseeable damage and to twice the annual service charge, without VAT, at the most. 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 managers are guilty of willful intent or gross negligence. Also, in terms of reason, Q-DAS® is only liable for claims arising from delay and impossibility in the event of culpable infringement of essential contractual gross negligence of simple agents, unless Q-DAS® can exempt itself from this by virtue of commercial usage. In the cases of section 8, para. 3, sentence 2, Q-DAS® is only liable in terms of amount for compensation of the typical foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS® has to pay for this claim. Liability for atypical or unforeseeable damage is excluded.
4. For any claims arising from culpability-based liability, Q-DAS® is liable in terms of reason and full amount in the event of its own willful intent and own 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; it is also liable in terms of reason for gross negligence of simple 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 only liable in terms of amount for compensation of typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS® has to pay for this claim. Liability for atypical or unforeseeable damage is excluded.
5. The above liability limitations do not apply to personal injury based on willful intent, gross negligence, and damage based on the absence of guaranteed properties or damage arising from the infringement of the 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 avoided by correct data back-up. In this respect, the general conditions for "Data Security" apply in their currently valid version, accessible on q-das.com.
7. Q-DAS® is not liable beyond the scope described above.
8. Any claims of the Contract partner arising from this agreement, in particular for removal of defects or compensation, lapse six months after their occurrence.

## **Section 9 Force Majeure**

Force majeure events that essentially make the service of Q-DAS® difficult or impossible entitle Q-DAS® to postpone the performance of the contractual obligations by the period of prevention and by a reasonable lead-time. Strikes and similar circumstances that affect Q-DAS® directly or indirectly are equivalent to force majeure.

## **Section 10 Miscellaneous**

1. Should a clause of the agreement be ineffective or become ineffective in the future, the Contract otherwise remains 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.
2. This Contract contains all the agreements that the Contract partners have made taking into account these “Maintenance and Service Conditions”; 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.
3. The Contract partner can only assign claims on this Contract with the consent of Q-DAS®.
4. The Contract partner only has a right of retention or set-off if his claims are based on this Contract. The Contract partner may only offset counterclaims against claims of Q-DAS® if the counterclaims are undisputed or legally established.
5. These “Maintenance and Service Conditions” apply exclusively. Order acknowledgements or terms of business of the Contract partners with conditions other than these “Maintenance and Service Conditions” 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.
6. The current “Maintenance and Service Conditions” of Q-DAS® apply; amendments are published on the Q-DAS® website (q-das.com). Q-DAS® will inform the Contract partner about amendments to the “Maintenance and Service Conditions” either by e-mail, fax or by letter. Changes to the “Maintenance and Service Conditions” become the content of the existing Contract with the Contract partner unless he refutes the validity of the amended “Maintenance and Service Conditions” in writing within three weeks after he has been notified about the changes, but three months after the publication of the amended version / changes on the Q-DAS® website at the latest.

## **Section 11 Place of Performance – Place of Jurisdiction and Governing Law**

1. If disputes occur between the parties, the Contract partner will try first of all to settle these amicably.
2. The place of performance and jurisdiction for all rights and claims arising from the 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, following signing of the Contract, move their domicile or usual place of residence out of the Federal Republic of Germany or whose domicile or whose normal place of residence is not known at the time when the suit is filed.
3. The law of the Federal Republic of Germany shall apply 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.