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dab: Daten – Analysen & Beratung GmbH

Contractual Terms and Conditions for the Use of Software and Software Services

§ 1 General / scope of application

- (1) These contractual terms and conditions apply to the use of software and software services of dab: Daten – Analysen & Beratung GmbH (“dab”). Furthermore, they apply to the arrangement of use of third-party software by dab.
- (2) Any deviating, contradictory or supplementary general terms and conditions of the customer shall not form part of the contract, even if such terms have been communicated, unless express consent to their applicability has been given in writing.
- (3) All offers and services of dab are aimed exclusively at business people operating as an undertaking within the meaning of the German Commercial Code (HGB), legal persons under public law or public special assets.

§ 2 Subject matter of the contract

- (1) Depending on the offer from dab and the agreement with the customer, this contract covers
 - a) the provision of dab’s own software (“dab software”) to the customer,
 - b) the allocation of storage space on the respective servers for use of dab software,
 - c) dab software services, in particular training courses, support services for the use of dab software, configuration services, analysis developments and other programming services and projects,
 - d) the arrangement of the provision of software from third-party providers (“third-party software”) to the customer; in this case, dab shall only act as an intermediary and the contract on the use of third-party software shall only come into effect between the customer and the respective third-party.
- (2) dab may involve the subcontractors specified in the service description when performing its services, in particular when allocating storage space.



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- (3) If contradictions arise between these contractual terms and conditions and the offer or order confirmation from dab, the provisions contained in the offer or order confirmation from dab shall prevail.

§ 3 Provision of dab software

- (1) Depending on the offer from dab and the agreement with the customer, dab software shall be provided via the Internet as a software-as-a-service ("SaaS") or cloud solution or as a software solution installed locally at the customer.
- (2) Where dab software is to be provided as a SaaS or cloud solution, dab shall provide the customer with dab software for the contractually agreed term in the agreed version at the router end of the data center in which the server with dab software is located ("transfer point") in return for payment. dab shall not be responsible for establishing and maintaining the data connection between the IT systems of the customer and the transfer point described.
- (3) Where dab software is to be provided as a software solution installed locally at the customer, dab shall provide the customer with dab software for the contractually agreed term by way of a download option and communication of the license key and other access data in text form. Unless agreed otherwise, the customer shall be responsible for the local installation of the software in their systems.
- (4) The functional scope of dab software is contained in the respective current service description on dab's website at <https://www.dab-europe.com>.
- (5) dab shall eliminate software errors found in dab software within the scope of technical feasibility. An error is deemed to exist if dab software does not fulfill the functions specified in the service description or does not work properly in some other way, following which use of dab software is not possible or is restricted.
- (6) dab develops its software on a regular basis and updates it through the provision of updates and upgrades. Where dab software is to be installed locally, depending on the agreement, dab shall provide the customer with updates and upgrades of dab software in the same way as the software itself. Unless agreed otherwise, the customer shall be responsible for installing the updates and upgrades.



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§ 4 Usage rights to dab software

- (1) Unless agreed otherwise in individual cases, the following provisions for the customer's usage rights to dab software shall apply.
- (2) dab shall grant the customer the non-exclusive, non-sublicensable and non-transferable right – restricted to the term of the contract – to the use of dab software in accordance with its intended purpose and in the scope agreed under the offer from dab, provided that the customer pays the agreed remuneration (e.g. the monthly agreed payments).
- (3) The customer may only process or reproduce dab software in cases where this is covered under the relevant intended use as outlined in the respective current service description. The customer may not provide dab software for use by third parties either in return for payment or for free.
- (4) All usage rights of the customer to dab software shall lapse when the term of the contract expires, and the customer shall be required to stop using the software, uninstall it if installed locally, and delete backup copies and other reproductions immediately and completely.

§ 5 Allocation of storage space for use of dab software (SaaS)

- (1) Where dab software is to be provided as a SaaS or cloud solution, the following provisions shall apply.
- (2) dab shall allocate the required storage space to the customer in the contractually agreed scope for storing their data. If the storage space is no longer sufficient for storing data, dab shall notify the customer of this. The customer can order corresponding additional allocation space subject to availability from dab.
- (3) The customer may not provide the storage space for use by third parties in return for payment or for free, either partially or in full.
- (4) dab shall take suitable measures to protect against data loss and to prevent unauthorized third-party access to the customer data. For this purpose, dab shall perform daily backups either itself or through a service provider, check the customer data for viruses and install the latest state-of-the-art firewalls.



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§ 6 Support for dab software; deployment of employees at customer

- (1) The current support policy of dab, available at <https://www.dab-europe.com/en-US/info/gtc>, shall apply to agreed support services of dab.
- (2) For all employees deployed by dab to the premises of the customer, the right to give instructions and direction shall remain with dab without restrictions in relation to the customer. dab shall be responsible in particular for
 - a) deciding on the selection and number of employees deployed;
 - b) determining working hours and organizing overtime if applicable;
 - c) granting vacation leave and time off;
 - d) governance of work and monitoring compliance of workflows.

§ 7 Disruption to / impairment of availability of dab software (SaaS)

- (1) Where dab software is to be provided as a SaaS or cloud solution, the following provisions shall apply.
- (2) dab makes it clear to the customer that restrictions or impairments of the availability of the SaaS services may arise, which are outside of dab's control. Such examples include in particular measures taken by third parties not acting on behalf of dab, technical conditions of the Internet over which dab has no control, and force majeure. The hardware and software used by the customer as well as the technical infrastructure can also have an impact on the services provided by dab. To the extent that such circumstances disrupt or impair the availability or functionality of the services rendered by dab, this shall have no effect on the contractual conformity of the services provided.
- (3) Furthermore, technically necessary adjustments, changes or additions to the SaaS services as well as measures that support the detection and correction of malfunctions may also result in the temporary disruption to or impairment of availability.

§ 8 Obligations of the customer

- (1) The customer shall support dab in the provision of the contractual services to a reasonable extent.
- (2) In order to use dab software, the system prerequisites contained in the service description or the offer from dab must be fulfilled at the customer. The customer shall assume responsibility for ensuring this themselves. The customer has familiarized themselves with



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the service description and in particular with the functional characteristics of dab software, and is responsible for ensuring that dab software matches their expectations, wishes and requirements.

- (3) Where dab software is to be provided as a SaaS or cloud solution, the customer shall not place any illegal content that violates laws, official regulations or the rights of third parties on the storage space provided. They must check their data and information for viruses or other harmful components before input and use state-of-the-art virus protection programs for this purpose.
- (4) Where dab software is to be provided as a component installed locally at the customer, the customer shall install dab software including the updates and upgrades provided in accordance with the specifications of dab.
- (5) The customer shall take appropriate precautions to prevent unauthorized third-party access to the protected areas of the software. They must keep confidential the login details provided to them and must ensure that employees with access to this information do likewise.
- (6) The customer shall assume responsibility themselves for the proper, complete and regular backup, input and maintenance of their data and information, as well as any documents provided by dab over the course of implementing the contract.
- (7) Where dab software is to be provided as a SaaS or cloud solution, the contents stored by the customer on the storage space intended for them may be protected by copyright and data protection law. The customer hereby grants dab the right to make the contents stored on the server accessible to the customer when the customer queries them via the Internet and, in particular, to copy and transmit them for this purpose and to be able to reproduce them for the purpose of data backup in a backup system or separate backup data center. To eliminate disruptions, dab shall be further entitled to make changes to the structure of the data or the data format.

§ 9 Remuneration

The customer shall pay dab the agreed fee plus statutory VAT. Unless agreed otherwise, remuneration shall be based on the dab price list valid at the time of contract conclusion.



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§ 10 Liability for defects for dab software / liability / blocking / indemnification

- (1) dab shall be liable for the functional and operational readiness of dab software provided for the contractual term in accordance with these contractual conditions. § 536b of the German Civil Code (BGB) (lessee's knowledge of defect upon contract conclusion or acceptance) and § 536c BGB (defects occurring during rental period; defects reported by lessee') shall apply. However, the application of § 536a (2) BGB (lessee's own right to remedy) is excluded. The application of § 536a (1) BGB (lessor's liability for damages) is also excluded if the standard provides for liability without fault.
- (2) The following provisions apply to the liability of dab as well as to the individual liability of employees, auxiliary persons and vicarious agents – irrespective of the legal basis.
 - a) dab shall only be liable for slight negligence (subject to a milder standard of liability in accordance with statutory provisions, e.g. for diligence in its own affairs) if one of the essential contractual obligations has been violated and only for foreseeable damages, the occurrence of which must typically be expected. Essential contractual obligations are those obligations that form the basis of the contract, were decisive for the conclusion of the contract, and on whose fulfillment the customer may rely.
 - b) dab shall not accept any liability for the loss of data insofar as the damage is attributable to the fact that the customer failed to perform regular data backups, thus ensuring that lost data may be recovered with justifiable effort and at reasonable expense.
 - c) dab shall be liable in accordance with statutory regulations for any loss or damage to the customer caused with intent or by gross negligence, ensues from the absence of a warranted property, results in culpable loss of life, bodily injury or damage to health, or where liability is assumed under the German Product Liability Act.
 - d) Liability of dab is excluded in all other instances.
- (3) In the event that services of dab are used by unauthorized third parties using the customer's access data, the customer shall be liable for any resulting charges within the scope of civil law liability until receipt of the customer's order to change the access data or the notification of loss or theft, provided that the customer is at fault for enabling access by the unauthorized third party.
- (4) Where dab software is to be provided as a SaaS or cloud solution, dab shall be entitled to immediately block access to dab software or storage space if there is a well-founded suspicion that the stored data is illegal or violates the rights of third parties. A well-founded suspicion of illegality or a violation of rights exists in particular if courts, authorities and/or



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other third parties notify dab of such suspicion. dab shall inform the customer of its intention to block access and the reason for such action immediately. Access shall be restored as soon as the suspicion is invalidated. dab shall also be entitled to block access if the customer, having been issued a prior warning and set a reasonable deadline, is in default of payment of a remuneration by more than four weeks. dab's payment claim shall not be affected by this blocking action. Access shall be restored immediately once the outstanding payments have been received. The right to block access shall be available to dab as a milder alternative to its right to exercise extraordinary termination.

- (5) The customer alone is responsible for all contents used and data processed by them using dab software, including any legal positions required. In this context, they shall indemnify dab against all liability and costs, including potential and actual costs arising from legal proceedings, in the event that a claim is made by third parties, including by employees of the customer, as a consequence of alleged acts or omissions of the customer. dab shall inform the customer of any claim asserted and, to the extent legally possible, provide them with an opportunity to defend against such claims. At the same time, the customer shall immediately communicate to dab in full all information available to them relating to the facts and subject of the claim. Any further compensation claims by dab shall not be affected.

§ 11 Third-party software

- (1) Where dab provides the customer with third-party software, dab shall arrange the provision of contractual third-party software through the third-party provider for the customer, in particular e.g. the use of SaaS services by third-party providers. In this case, dab shall only act as an intermediary and the contract on the use of third-party software specified by the customer and on the acquisition of the software licenses specified by them shall only come into effect between the customer and the respective third-party. In this case, dab shall be responsible for the offer, order and billing process on behalf of the respective third-party provider.
- (2) The provisions agreed between the customer and the respective third-party provider shall apply to the use of the third-party software by the customer, in particular to the respective current functional scope, usage rights of the customer, liability for defects and other liability, maintenance and support by the third-party provider, data protection provisions, as well as term and termination. The customer shall take it upon themselves to do their due diligence on the third-party provider, in particular with respect to current service descriptions and terms of use.



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§ 12 Term and termination of the contract

- (1) The term of the contract on the use of dab software is derived from the offer from dab and the agreement concluded with the customer. The term shall be one year unless a specific period has been agreed. The contractual relationship shall commence upon provision of the software.
- (2) The right of the parties to terminate the contract for good cause shall remain unaffected. dab is particularly entitled to terminate the contract without notice if the customer is in default of payment of a remuneration by more than two months despite reminders. If the customer is responsible for the termination, they shall be required to pay dab the agreed fee, less expenses not incurred by dab, up to the earliest date on which the contract would normally end in the case of an ordinary termination.
- (3) Declarations of termination must be submitted in written form to be effective. Text form shall not be accepted.
- (4) After termination of the contract, dab shall return to the customer all documents provided by the customer and still in the possession of dab, as well as data carriers related to the contract in a customary business format selected by dab, and delete the data stored with dab, provided that no storage obligations or rights exist. Furthermore, the customer has no right to receive the software suitable for the use of the data.

§ 13 Data protection / confidentiality

- (1) Each party shall observe the legal provisions on data protection and data security applicable to them. If and to the extent that the customer processes or allows personal data to be processed on IT systems for which dab or a third party on behalf of dab is technically responsible, an order processing agreement as specified by dab must be concluded in accordance with Art. 28 (3) of the EU General Data Protection Regulation (GDPR). In this case, the customer shall remain the responsible authority in relation to personal data and must therefore continuously review whether the processing of such data using the software is carried out in compliance with all data protection requirements, in particular whether it is covered by adequate legal permissions.
- (2) The parties shall keep confidential all information about the respective other party, which they have become aware of or which they become aware of over the course of this contractual relationship, which is marked as confidential or which is identifiable as business and trade secrets (hereinafter referred to as “confidential information”) on the basis of other circumstances, and they shall not share it with third parties, record it or exploit it in some other way, unless the respective other party has given their express written consent to such disclosure or use, or the information must be disclosed on the basis of law,



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a court decision or an administrative decision. The information shall not be considered confidential information within the meaning of this provision if

- a) it was already known to the other party beforehand without the information being subject to an obligation of confidentiality,
- b) it is generally known or becomes known without any violation of the assumed confidentiality obligations,
- c) it is disclosed to the other party without any breach of confidentiality obligations by a third party.

The obligations under this provision shall apply beyond the term of the contract.

- (3) The customer permits dab to include their name or company in a reference list.

§ 14 Applicable law, place of jurisdiction, other

- (1) The law of the Federal Republic of Germany shall apply to the exclusion of international private law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- (2) The customer may not – subject to the assignment of claims in accordance with § 354a HGB – transfer individual rights of this contract or the contract as a whole to third parties unless dab expressly provides written consent thereto.
- (3) Should a party choose not to exercise one of their rights under this contract, this shall not be considered as a waiver of that right, unless the party that possesses the right informs the other party explicitly and in writing of such a waiver.
- (4) The place of performance for all obligations from this contract shall be the headquarters of dab. This shall also apply to the place of supplementary performance unless agreed otherwise. If the customer is a merchant within the meaning of the German Commercial Code, legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship, directly or indirectly, shall be the headquarters of dab. This also applies to those persons/entities who do not have a place of general jurisdiction in Germany or have transferred their place of residence or habitual abode to a country other than Germany after conclusion of the contract, or whose place of residence or habitual abode is unknown when the legal action is filed. dab is also entitled to institute litigation at the statutory jurisdictional venue.



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- (5) Verbal subsidiary agreements do not apply. Differing or supplementary conditions as well as amendments to this contract including the written form clause shall only apply if agreed in writing and expressly marked as an amendment or addition.
- (6) These terms and conditions are available in both German and English. However, only the German version is legally valid and binding.
- (7) If one or more provisions contained in these terms and conditions prove to be ineffective, this shall not affect the validity of the remaining provisions.