dab: Daten – Analysen & Beratung GmbH

Provisions

Regarding the Maintenance and Support Services for

dab: Daten – Analysen & Beratung GmbH Software

As of: 9 December 2016

§ 1 General / Scope

With regard to maintenance and support services of dab: Daten – Analysen & Beratung GmbH ("dab:GmbH"), these provisions take precedence over the "Provisions Regarding the Sale of dab:GmbH Software to Customers" and the "General Terms and Conditions Governing dab:GmbH Deliveries and Services to Customers", which also apply. These provisions in the version available at https://www.dab-europe.com/en-US/info/gtc/ at the time the customer makes its declaration are also applicable to all future contracts regarding the maintenance and support services of dab:GmbH software, even if not expressly agreed.

§ 2 Object of this Agreement

(1)   The object of this agreement is the maintenance of the software and the rendering of support services with regard to the software. The object of the maintenance and support is exclusively the software products created by dab:GmbH ("Software") and sold or rented to customers in their respective current form for which the rendering of maintenance and support services has been agreed.

(2)   Maintenance and support cover only Software that has been created by dab:GmbH (dab:GmbH Software) and is offered in the form of a software sale or software rental agreement. Software of other manufacturers that the customer procures via dab:GmbH ("Third-party Software") is not covered by this agreement.

(3)   Maintenance and support services do not include:

a)   Services for Software that is not used according to the operating conditions specified by dab:GmbH, in particular adaptations of the software to a new

operating system, a modified software or hardware environment of the customer, including new versions of Third-party Software; dab:GmbH offers software adaptation to a new operation system as a separate service subject to a charge;

b) Software adaptation, supplementation or expansion, particularly to be in line with new legal regulations, products, services or modified operating processes of the customer;

c) Services for Software that was modified by programmer work not performed or approved by dab:GmbH;

d) Services for Software for which updates or other defect and error correction measures provided by dab:GmbH were not installed and the defect or error reported had already been remedied by these updates or measures, unless the installation is unreasonable for the customer based on reasons for which the customer is not responsible;

e) Services for Software with a release version that is generally no longer maintained by dab:GmbH; dab:GmbH will inform the customer in a timely manner, however, about the expiry of the support for specific versions of the Software;

f) Services that can be rendered at dab:GmbH headquarters via remote servicing, for example, but are performed at another location at the customer's request, such as in the customer's business premises;

g) Remedy of malfunctions not caused by dab:GmbH that resulted from the improper use of the Software by the customer, force majeure (e.g. war, riots, natural disasters, strikes) or interventions by third parties; dab:GmbH offers this service separately and it is subject to cost;

h) Services outside the service hours pursuant to Section 6;

i) Remedy of errors or defects, if the causes of such do not originate in the Software delivered by dab:GmbH, in particular as related to the use of Third-party Software versions not approved by dab:GmbH;

j)   Creation of software products and the delivery of function enhancements for the Software, maintenance of hardware and advisory services as well as trainings that go beyond support services in individual cases;

k)   Services that become necessary because the customer does not fulfil its duty to cooperate.

§ 3   Maintenance Services

(1)   Within the context of maintenance services, dab:GmbH renders the following services that are included in the annual maintenance fee according to Section 8 (1):

a)   Support of the customer via telephone, email or, if agreed, via a web-based meeting system by providing information about defect and error prevention;

b)   Remedy of defects following expiry of the warranty deadline based on the sale of the Software that arise during proper use of the Software, both within the program code as well as the documentation, provided that remedy is necessary to maintain and restore the Software's availability in its respective valid version;

c)   The remedy of errors, whereby an error is considered to exist if the Software and/or the components entail imperfections that do not hinder their functionality, provided that the remedy of the error can be performed without new programming for significant parts of the software.

d)   Transfer of the respective newest version of the Software (Updates), whereby an obligation of dab:GmbH to develop Updates does not exist;

e)   Updates of software documentation (if there is a material change in the scope of function or use of the Software, completely new documentation will be provided).

(2)   The services also comprise the handling of defects and errors that dab:GmbH becomes aware of independently from the customer's use of the Software.

(3)   The remedy of defects and errors within the meaning of this agreement includes localisation of the cause, diagnosis as well as services aimed at removing the de-

fect or error. Remedy services can be performed via a workaround, patches, updates, major updates (hereinafter referred to as "Updates") at dab:GmbH's discretion and, in coordination with the customer, also by delivering a new software release.

(4)   dab:GmbH is entitled to render maintenance services by way of remote servicing or remote diagnosis.

(5)   Existing defect claims of the customer, if any, arising from the sale of the software remain unaffected.

§ 4   Updates

(1)   dab:GmbH will deliver Updates by introducing the possibility for the customer of downloading the Software via the Electronic Software Delivery (ESD) from the server to its computer (Download).

(2)   The customer shall carefully and immediately review the Update made available by dab:GmbH on a test system at its own costs.

(3)   The installation on a test or productive system by dab:GmbH is not part of the maintenance and support service.

(4)   Provided that dab:GmbH transfers computer programs or other works subject to copyright protection to the customer on the basis of maintenance services, the provisions arising from the sale of the Software shall apply to these protectable items as well as the rights of use granted to the customer in this context. However, the customer may only use a version productively. The customer is entitled to create and store backup copies of earlier Software versions for documentation purposes and for emergency situations after productive use has been completed.

§ 5   Support Services

(1)   dab:GmbH provides user support ("Support") to the customer and/or its employees via telephone, email or, if agreed, via a web-meeting system. If this support exceeds the usual scope of business, it will be billed to the customer and compensated according to time expenditure pursuant to Section 8 (2).

(2) dab:GmbH is entitled to inform the customer about function enhancements for the Software until the customer revokes permission to do so.

§ 6 Maintenance and Support Service Hours

The licensor provides maintenance and support services during the following services hours:

Monday to Friday	8 am to 5 pm (local time)
Saturday, Christmas Eve (24 Dec.), and New Year's Eve (31 Dec.)	no service
Sunday and Holidays in Bavaria	no service

dab:GmbH usually responds to customers' requests within two working days.

§ 7 Customer's Duty to Co-operate

(1) The customer shall designate at least one professionally qualified employee to serve as the key user and inform dab:GmbH of this in writing. The customer shall make this employee available to dab:GmbH at no charge provided that this is necessary to perform the maintenance services. dab:GmbH must be informed immediately of changes in the contact person. The contact person should be trained in use of the Software and have experience in handing the Software.

(2) The customer must perform an analysis of the system environment to the best of its capabilities before reporting errors or defects to ensure that the error or defect cannot be traced back to the system components, which are not covered by this agreement.

(3) The customer shall report defects or errors to dab:GmbH immediately via telephone or email using the telephone number or email address provided to it for this purpose. The report must include comprehensible descriptions of the defect or error, provided in as much detail as possible, and particularly include the conditions under which the error or defect occurred and its consequences. The customer shall record the defects or errors identified within the framework of test or real operations in a comprehensible manner.

(4) For the purpose of remote maintenance, the customer permits dab:GmbH to access the Software electronically. It shall provide the internet and network connections required in this context. In particular, the customer will ensure that a communications connection can be promptly established between the customer and dab:GmbH in order to perform maintenance services.

(5) For the purpose of performing maintenance and support services, the customer shall allow dab:GmbH to inspect necessary documents, documentation and information, particularly regarding the customer's hardware and Third-party Software, and shall make test plans, test data as well as test environments available, where necessary.

(6) The customer shall perform measures to remedy errors or defects immediately.

(7) The customer is responsible for securing its database in line with the state of the art technology on a regular basis and especially before performing updates. Data security must be maintained so that an immediate restoration of the secured data is possible.

(8) If the customer should fail to perform the actions for which it is responsible, dab:GmbH's performance obligation shall be suspended for the duration of the customer's default in performance where the obligation cannot be fulfilled or can only be fulfilled with a disproportionate extra expenditure.

§ 8 Remuneration, Default in Payment, Prohibition on Offsetting

(1) Unless otherwise contractually agreed, the annual fee for maintenance and services related to the remedy of errors is as follows:

- 20% of the respective current list price of the software licences acquired by the customer in the case of a sale of the Software (Software Purchase)

- It is already included in the rental price in the case of software licencing (Software Rental).

dab:GmbH shall inform the customer of the price increase resulting herefrom in writing while observing a three-month notice period to the end of a contractual year. In this case, the customer has the right to terminate the provision of maintenance and support services to the end of the contractual year without complying with the

minimum contractual term pursuant to Section 9 (2); in this case, remuneration remains unaffected.

(2) Remuneration for support and other consulting services requires a separate agreement and will be charged according to time expenditure and the standard remuneration rates.

(3) Remuneration does not include the relevant valid value-added tax.

(4) Remuneration is invoiced in advance on an annual basis for the relevant licence period and must be settled within 14 days of the issue date without deduction.

(5) If the customer does not issue payment despite it becoming due, the customer is in default. The default interest amounts to nine percentage points above the applicable base interest rate. With regard to business persons, the claim to default interest according to Sec. 353 of the German Commercial Code (HGB) remains unaffected. dab:GmbH reserves the right to assert retention rights, additional compensation claims and any statutory flat fees for payment delays.

(6) The customer may only offset against undisputed or legally established claims of dab:GmbH. This also applies to the customer's rights of retention.

§ 9 Effective Date, Contractual Term, Termination

(1) This agreement takes effect upon signature, at the earliest, however, upon transfer of the Software according to the provisions arising from the sale of the Software.

(2) The term specified in the order form shall apply. If a term is not specified in the order form, the term shall amount to one year. Thereafter, this agreement shall extend automatically by an additional 12 months in each instance if it is not terminated by one of the parties in compliance with a termination notice period of eight weeks to the end of the respective term of this agreement.

(3) The right of both parties to extraordinary termination without notice based on good cause remains unaffected.

(4) Termination must be made in writing.

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GmbH Software – Version: 9 December 2016