Terms & Conditions

A. GENERAL INFORMATION

1. **Subject of the Contract**

1.1 This Master Agreement governs the legal arrangements for the provision of services ordered by the Client from the Contractor ("Individual Contract"). Upon acceptance of the Contractor's offer by the Client, the Contractor shall confirm the order with an order confirmation. The Contractor shall provide the services ordered to the Client accordingly.

1.2 Specific performance obligations are only established in conjunction with an Individual Contract. The conclusion of this Master Agreement does not confer any entitlement upon the Client to receive services from the Contractor.

1.3 Unless expressly stated otherwise in the Individual Contract, this Agreement does not encompass the provision of on-site services by the Contractor at the Client's premises. On-site services at the Client's premises, as well as other services beyond the scope of this Agreement, shall be provided by the Contractor for separate remuneration based on the agreed daily rate.

1.4 The Contractor shall utilize exclusively suitably qualified personnel to fulfil the obligations stipulated in this Master Agreement or in Individual Contracts.

2. **Scope of Application and Hierarchy of Provisions**

2.1 This Master Agreement shall also apply to all services provided by the Contractor for the Client, unless expressly agreed otherwise in the respective Individual Contract.

2.2 The basis for the cooperation between the contracting parties shall be, in the following order:

(i) the contractual text of this Master Agreement in clauses 1 to 58.2,

(ii) the attachments of this Master Agreement,

(iii) the contractual text of the respective Individual Contracts,

(iv)   the attachments of the respective offers.

Deviations from the provisions of this Master Agreement, agreed upon by the parties in the Individual Contract, shall only be effective if they are in writing and expressly identified as deviations from a specific clause of this Master Agreement.

In case of contradictions between provisions of the same hierarchical level, the more specific provision shall apply.

2.3   The attachments to the Individual Contracts, as well as this Master Agreement and its attachments, shall be an integral part of the Individual Contracts.

2.4   Deviating or supplementary conditions of the Client that deviate from this Master Agreement shall not be part of the contract; this shall particularly apply to general terms and conditions.

3.   Force Majeure

3.1   Any failure or non-performance shall not be considered as a breach of contract to the extent that it is attributable to unavoidable events, in particular earthquakes, floods, water ingress, fires, explosions, power outages, embargoes, government restrictions, uprisings, terrorist attacks, wars or other military actions, civil unrest, rebellions, vandalism, sabotage, strikes in own or supplying companies or other reasons beyond the control of the party ("force majeure"). The obligations of the affected party shall be suspended to the extent that they are affected by force majeure.

3.2   As long as the state of force majeure persists, the time for performance shall be extended by the duration of the delay due to force majeure plus a reasonable restart period. The payment obligations of the Client for the affected services under the contract shall be suspended for the duration of force majeure.

3.3   If there are reasonable grounds to believe that the impediment to performance due to force majeure will last for more than ninety days, the parties may terminate a contract for the maintenance of software or for the provision of software as software rental or in the software-as-a-service model in writing. In this case, if the software has not yet been delivered (download) under a software purchase agreement, either party may terminate the contract. No further rights shall exist.

4. Obligations of the Client

4.1 The Client shall fulfill the cooperation duties required for the performance of services by the Contractor.

4.2 The Client shall grant the Contractor the access rights to buildings and premises where the Contractor is required to perform services, as agreed upon or necessary in this framework agreement or individual contracts.

4.3 If the Client fails to fulfill its cooperation duties, the Contractor shall be released from providing the services for which cooperation is necessary to the extent that the services cannot be performed due to the non-fulfillment of the respective duty.

4.4 If the Client engages third parties to fulfill its cooperation duties, the Client shall be liable for their fault towards the Contractor as if it were its own fault. In case of a culpable breach of cooperation duties, the Client shall compensate the Contractor for any resulting damages, such as downtime costs.

5. Compensation and Reimbursement of Expense

5.1 The compensation shall be determined by the respective individual contract. The prices stated therein are exclusive of value-added tax.

5.2 Unless otherwise agreed expressly, the compensation shall be paid without deduction within fourteen (14) days of receipt of the invoice.

5.3 The Client shall reimburse the Contractor for the expenses incurred by the Contractor in checking a report of malfunctions, errors or defects submitted by the Client, if it is determined after the check that there was no error, defect or malfunction in the technical facilities of the Contractor and this would have been recognizable with reasonable error search.

6. Rights to refuse performance, prohibition of set-off.

6.1 Retention rights and rights to refuse performance by the Client are excluded. This does not apply to claims that are undisputed, legally binding, or ready for decision.

6.2 The right of the Client to set off against claims of the Contractor is excluded. This does not apply if the Client sets off against an undisputed claim, a legally binding claim, or a claim ready for decision.

7. Liability

7.1 The claims of the Client for damages or reimbursement of futile expenses shall be governed by this Section 7, irrespective of the legal nature of the claim.

7.2 The Contractor shall be liable without limitation for damages arising from the breach of life, body or health, based on intentional or negligent breach of duty by the Contractor, a legal representative or vicarious agent of the Contractor. The Contractor shall also be liable without limitation for other damages based on intentional or grossly negligent breach of duty by the Contractor, a legal representative or vicarious agent of the Contractor.

7.3 The Contractor's liability for simple negligence shall only apply if a duty is violated that is fundamental to the proper performance of the contract and on whose fulfillment the Client relies or may rely (cardinal duty). In such cases, liability shall be limited to the typical and foreseeable damages.

7.4 In the case of simple negligent breach of a cardinal duty, liability shall also be limited in total to a maximum amount equal to the purchase price agreed upon in the individual contract (in the case of the purchase of the software under Section B.I) or the annual fee (in the case of use as rented software under Section B.III or as Software as a Service under Section B.IV).

7.5 The Client is obliged to adequately safeguard the data processed by the software according to the current state of the art, at least according to the recommendations of the Federal Office for Information Security (BSI, www.bsi.bund.de). In case of destruction and/or loss of data, the Contractor's liability shall be limited to the cost of restoration that would have been incurred if the Client had made proper backup copies for their reconstruction. The cost of restoration includes the additional costs incurred specifically for the restoration of the data.

7.6 In all other respects, the Contractor's liability, in particular under § 536a of the German Civil Code (BGB), is excluded.

7.7 Limitations of liability and exclusions of liability pursuant to this Section 7 do not affect the Contractor's liability under the mandatory statutory provisions of the Product Liability Act, due to fraudulent concealment of a defect, or the assumption of a guarantee for the quality of an item.

7.8 This Section 7 shall also apply in favor of the Contractor's vicarious agents.

8. Marketing

8.1 Each party may use the name and trademark or logo of the other party on their website and in presentations as a reference for the duration of this usage agreement, unless the other party objects to such use in writing.

8.2 The use of the name and trademark or logo for other marketing activities, particularly in press releases and articles, requires prior consent from the other party.

9. Confidentiality

Both Contracting Parties undertake to treat information and trade secrets that they become aware of about each other during the negotiation or performance of this agreement as confidential, and not to disclose such information to third parties, and to obligate their employees accordingly. The Contractor is entitled to use the Client as a reference.

10. Language

10.1 The contractual services will be provided in German or English language.

10.2 The Contractor ensures that the personnel responsible for maintenance and support tasks are sufficiently proficient in German or English language

11. Applicable Law and Jurisdiction

11.1 German law shall exclusively apply between the contracting parties. The provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11.4.1980 (CISG) are excluded.

11.2 The exclusive place of jurisdiction for all disputes between the parties arising out of or in connection with this agreement or the offers and order confirmations shall be Cologne.

12. Final provisions

12.1 This contract, including its annexes which form an integral part of the contract, constitutes the complete and final agreement between the Parties. There are no verbal side agreements.

12.2 Any agreements that amend, supplement, or specify these terms and conditions, as well as any special guarantees and arrangements, must be made in writing. This also applies to any amendments to this Section 12.2.

12.3 The invalidity of any provision of this contract shall not affect the validity of the remaining provisions. The Parties shall promptly replace an invalid provision with a provision that, to the extent legally possible, comes closest in meaning to the invalid provision and best reflects the Parties' mutually understood economic interests as intended by the invalid provision.

B. SPECIAL PART

I.   SOFTWARE PURCHASE

If the subject of the individual contract is the purchase of software, the provisions of this Section B.I. shall apply

13.   Subject matter

13.1   The subject matter of this contract is the permanent provision of the software "aqua" (hereinafter referred to as "Software") in object code, as described on the Contractor's website (https://aqua-cloud.io/). The Contractor also provides the Client with the accompanying user documentation in electronic form.

13.2   The Contractor makes the Software available for download via the internet. The download link will be provided to the Client after full payment. The delivery of the Software on a physical medium is not part of the contract, unless the parties expressly agree to the delivery of a backup copy of the Software on a physical medium in the respective individual contract.

13.3   Installation shall be carried out by the Client, unless otherwise stipulated in the individual contract.

13.4   The Client is not entitled to a copy of the source code of the Software or any other access to such source code.

14.   Usage rights

14.1   The Contractor grants the Client a perpetual, non-exclusive right to run the Software on its own computers for its own purposes, as agreed upon in the individual contract's licensing model, and to reproduce the Software to the extent necessary. Running the Software for its own purposes allows for usage by the companies listed in the individual contract. Except for the right to reproduce as regulated in this Clause 14, no usage rights to the Software are granted to the Client. The Contractor reserves all publication, reproduction, editing, and exploitation rights of the Software, in particular. The Client confirms that only authorized employees will have access to the Software. If the Client has acquired a concurrent user license as part of the agreed licensing model, the Software may be installed on multiple devices, but simultaneous usage is only permitted for the number of licenses acquired.

14.2   The user documentation mentioned in Clause 13.1 may be printed and reproduced by the Client for use as described in Clause 14.1. Passing it on to third parties outside the Client's company (as per Clause 14.1 sentence 2) is prohibited.

14.3   The Contractor guarantees that the Software is free from third-party rights that restrict or exclude usage according to the contractually agreed scope. If the contractually agreed usage of the Software is affected by third-party intellectual property rights, the Contractor has the right, to the extent reasonable for the Client, either to modify the Software in a way that it falls outside the scope of protection without significant limitations on usage, or to obtain the authorization for unrestricted and contractually compliant usage of the Software for the Client without additional costs. If the contractually agreed usage of the Software is impaired by third-party intellectual property rights without the fault of the Contractor, the Contractor may refuse the affected services. The Contractor will inform the Client immediately and provide suitable access to its data. The Client is not obliged to pay in this case. Other claims or rights of the Client remain unaffected.

14.4   Access to the software download provided to the Client must be protected against unauthorized access by third parties. The Client's employees are to be instructed to comply with the present contract conditions.

14.5   If a backup copy has not been provided in accordance with Clause 13.2, the Client is authorized to create one (1) machine-readable copy of the Software for backup purposes. When creating the copy, the Client must ensure that the notice "backup copy" is attached to the copy in machine-readable form and/or in plain text. The Client must ensure that the computer program is not included in other data backups or copied.

14.6   Any serial numbers, copyright notices, or other program identification features must not be removed. The same applies to suppression of corresponding features on the screen display.

15.   Purchase price

15.1   The purchase price is due before the download of the software, unless otherwise expressly stated in the individual contract.

15.2   The Contractor will provide the Client with a download link within two (2) business days after receipt of payment, through which the Client can proceed with the download of the software.

16. Modification and Compilation

16.1   Unless expressly permitted in this Master Agreement or the individual contract, the Client is prohibited from reverse engineering the various stages of the Software, including making any modifications to the program code, in particular translating the provided program code into another code form (decompilation).

16.2   If the Client requires interface information to achieve interoperability with another program, the Client is entitled to take actions as per clause 16.1 for their own use, provided that the Contractor, despite a written request from the Client, is unwilling or unable to provide the necessary information. If the Contractor agrees to provide the necessary information, the parties will conclude a separate agreement regarding the provision of the information required by the Client.

16.3   If the Client takes actions as per clause 16.1, only the Client or its employees may use the information obtained for internal purposes of the Client. Prior to any further use, in particular commercial use or disclosure to third parties, the Client must obtain the consent of the Contractor. The Contractor may only refuse consent for material reasons.

16.4   Removing copy protection or similar protective mechanisms is not permitted.

17. Resale Rights and Right of First Refusal

17.1   In case of transfer to a third party, the Client shall completely abandon the use of the software and delete and/or hand over all existing copies to the Contractor. The Client shall confirm in writing to the Contractor the deletion of all copies and provide information on to whom the software has been transferred, so that the Contractor can verify compliance with its copyrights and license terms by the third party. By the transfer, all rights of the Client to the software shall expire.

17.2   The Client shall not transfer the software to third parties if there is reasonable suspicion that the third party will violate the terms of the contract, in particular by making unauthorized reproductions.

17.3   The Client grants the Contractor a right of first refusal to the software, with the condition that the Contractor has the right to enter into a purchase contract with a third party instead of the Client. The following shall apply:

(a)   The Client shall only conclude the contract with the third party subject to the condition that the Contractor does not exercise its right of first refusal.

(b)   The Client shall promptly notify the Contractor in writing of the content of the contract concluded with the third party, indicating the name and full address of the third   party.

(c)   The Contractor shall provide a written statement on the exercise of the right of first refusal to the Client within 10 business days after receipt of the notification.

(d)   Upon exercise of the right of first refusal, the contract between the Contractor and the Client shall be concluded on the conditions agreed upon between the Client and the third party.

18.   Investigation and Obligation to Give Notice of Defects

18.1   The Client shall promptly, but no later than 14 days after receipt and completion of installation by the Contractor or self-installation, examine the Software for completeness and defects, including checking the functionality of the program functions. The obligation to give notice of defects under § 377 of the German Commercial Code (HGB) applies.

18.2   Any notice of defects shall describe the alleged defects in as much detail as possible, including the installation environment, executed functions, error symptoms, impact of the error on the functionality of the Software, and any on-screen messages (qualified error report).

19.   Claims for Defects

19.1   The Contractor shall provide a warranty for defects in the Software in accordance with the provisions of this Section 19.

19.2   The quality of the Software is exclusively and conclusively determined by the program description on the Contractor's website at https://aqua-cloud.io. The Contractor does not provide any warranty for the quality, durability, or other guarantees for the Software, unless the Contractor has explicitly and in writing assumed a warranty designated as such in the individual contract.

19.3   A defect for which the Contractor is liable is not considered if the error is based on the use of hardware and environment software that does not meet the system requirements described   on   the   Contractor's   website (https://aquacloudio.zohodesk.eu/portal/en/kb/aqua-wiki-en/installation/system-requirements). There are also no rights for defects caused by program modifications that have not been made, initiated, or approved by the Contractor. If the Client installs the Software themselves, there are no rights for defects arising from installation-related errors during or after installation. This does not apply if the error is based on faulty installation instructions provided by the Contractor.

19.4   The Contractor will remedy material and legal defects after a timely and substantiated complaint by the Client. The Contractor is entitled to remedy the defect at its own

discretion through rectification or replacement. In particular, the Contractor is entitled to provide defect rectification by delivering new program packages (patches, updates) that no longer contain the errors reported by the Client. The Client installs such program packages themselves if this is reasonable. If this is not the case, the Contractor will perform the installation through remote access. In that case, the Client grants the Contractor the necessary remote access to the installation environment of the Software. The Contractor is also entitled to provide the rectification on-site at the Client's premises. If it is reasonable for the Client, the Contractor may provide a workaround solution for rectification until the defect is finally rectified. In the event of a legal defect, the Contractor, at its discretion, will either create a legally defect-free usability of the Software or modify the Software in such a way that third-party rights are no longer infringed.

19.5   If the remedy fails within a reasonable period of at least four (4) weeks, the Client may demand a reasonable reduction of the agreed price. There is no right to rescission.

19.6   In the case of replacement delivery, the Contractor is also entitled to provide a new version of the program with an equivalent scope of functions, unless this is unreasonable for the Client, for example, due to the requirement of a different operating system or more powerful hardware. Familiarization of the Client with any changed program structure or user guidance generally does not constitute unreasonableness.

19.7   If the Contractor performs the installation on behalf of the Client in accordance with the individual contract, the Client's warranty rights shall expire one (1) year after complete installation of the Software by the Contractor. Otherwise, the Client's claims for defects shall expire one (1) year after the Client's download of the Software. In case of fraudulent concealment of a defect, statutory warranty provisions apply.

19.8   Section 7 applies to claims for damages due to defects.

20.   **Software maintenance and servicing.**

Maintenance and support services, including the provision of updates or upgrades, are not subject to the software purchase agreement. Maintenance and support services are described in Section B.II. of this framework agreement.

21.   **Reservation of ownership.**

21.1   If the individual contract provides for a payment method deviating from clause 15, the delivered software, including the accompanying documentation, remains the property of the Contractor until full payment of all claims arising from this contract.

21.2 In the event of enforcement of the retention of ownership and withdrawal from the contract, the Client must delete all copies made and immediately cease using the software. The Client's right to use the software expires.

22. Software security and audit

22.1 The Software, user documentation, and any access data, if available, must be protected against unauthorized access by third parties.

22.2 The Contractor is entitled to conduct an annual audit (software audit) to verify the contractual use of the Software, particularly with regard to qualitative and quantitative usage by the Client. For this purpose, the Client shall provide the necessary documents and enable an audit of Software usage with respect to this Agreement. The Contractor is entitled to conduct the audit at the Client's premises during normal business hours. The Client shall grant the Contractor or any third party appointed by the Contractor for the audit access to its premises, provide the requested information, and make documents available, grant access to the computers on which the Software is installed, and, upon request, provide the necessary rights to these computers, including administrator rights, in order to verify compliance with the license agreement. The Contractor will take care to minimize disruption to the Client's operations during the audit. The Contractor will notify the Client of the results of the audit in writing upon its completion.

22.3 If the Client intends to exceed the rights granted under the agreed-upon license model, it must acquire the necessary usage rights for such usage against the corresponding license fee. In the event that the Client exceeds the originally granted usage rights by more than just insignificantly (e.g. not only temporarily exceeding the permitted usage by more than 10%), it shall undertake to pay the Contractor a sum of money as a penalty. The penalty shall amount to 50% of the license fee due for the excess usage. The obligation to pay the license fee shall remain unaffected. Upon acceptance of the license fee, the Contractor is not required to declare a reservation regarding the penalty.

II. SOFTWARE MAINTENANCE

If the subject of the individual contract includes software maintenance, the provisions of this Section B.II shall apply.

23. Subject Matter

23.1 The Contractor shall provide maintenance for the computer program "aqua" (hereinafter referred to as the "Software") sold to the Client based on the individual contract (hereinafter referred to as the "Software License Agreement"), in the current version as described on the Contractor's website (https://aqua-cloud.io).

23.2 In order to use updates as part of the maintenance, adjustments to the environment software, such as the operating system, or hardware may be required. The adjustment of environment software or hardware is not included in the respective updates. If new system minimum requirements apply, the Contractor shall notify the Client, who is responsible for ensuring compliance with such requirements.

23.3 The maintenance of computer hardware is not part of this contract.

24. Maintenance services

24.1 The Contractor's services for the maintenance of the Software include the following:

24.1.1 Remote diagnosis of program errors and malfunctions, either by telephone or through access granted as per clause 4.2 of this contract;

24.1.2 Support and advice via telephone, fax, and email within the scope of the hotline as per clause 27 of this contract for defects in the Software;

24.1.3 Provision of new versions of the Software with and without new functionality (hereinafter referred to as "Upgrades" or "Updates") as soon as they are available and released for delivery by the Contractor. The timing of the release shall be determined by the Contractor;

24.1.4 Maintenance of the program versions installed at the Client's site to keep them up to date, so that replacement can be made promptly in case of program destruction or loss, and so that errors and malfunctions can be traced in customized program components, if any.

24.2 The following services are not included in the Contractor's contractual maintenance services:

24.2.1 Maintenance services required due to the use of the Software on a different hardware system or under a different operating system;

24.2.2 Maintenance services required due to any intervention in the Software by the Client;

24.2.3 Maintenance services related to the interoperability of the Software with computer programs other than those supported by the Software (see the current list on the Contractor's website at https://aquacloudio.zohodesk.eu/portal/en/kb/articles/agent), subject to clause 25.

24.2.4 If the Contractor provides services as per clauses 24.2.1, 24.2.2, 24.2.3 based on an incorrect error report from the Client, the Contractor is entitled to charge for the services as per clause 29 (Help Desk).

24.3 The Contractor shall deploy exclusively qualified personnel familiar with the aqua computer program and its applications to perform the work required under this contract.

24.4 The Contractor may provide services beyond the scope of this contract, such as the provision of upgrades not included, or the provision of additional program components, based on special agreement and against separate remuneration.

25. Updates and Upgrades

25.1 The provisions of clauses 13, 15, 16, 19, and 20 of the software license agreement also apply to updates and upgrades.

25.2 By downloading an update or upgrade, the client's usage rights to the respective previous version of the software granted by the contractor shall expire. If the client promptly, but no later than five (5) business days after notification of the availability of the update or upgrade, informs that they do not intend to use it, they shall remain entitled to use the previous version, subject to clause 25.5, provided that they return all copies of the update or upgrade in accordance with the following clause 25.3.

25.3 Upon expiration of the usage rights to the respective previous version of the software in accordance with the above clause 25.2, the client is obliged to return the respective previous version of the software to the contractor. If a new update or upgrade is provided, the client must uninstall the old version. Proper return also includes the complete and permanent deletion of all copies. The contractor may, by written notice instead of return, order the deletion of the software and the destruction of all copies of the documentation.

25.4 The contractor shall coordinate with the client the measures that need to be taken during maintenance work, error correction, or installation of updates or upgrades at the client's site, in terms of timing.

25.5 After the release of a new update or upgrade, the last version of the previous update or upgrade shall be supported by maintenance for a period of 12 months. The client is obliged to switch to the new update or upgrade within these 12 months. If this is not reasonable for objective reasons, the client is entitled to terminate the maintenance agreement with a notice period of 3 months, effective at the end of the support period for the previous version pursuant to clause 25.5, sentence 1.

26. Cooperation Obligations of the Client

26.1 To support the Contractor in the provision of services under this contract, the Client shall in particular:

26.1.1 Assist the Contractor in rectifying any errors in every respect;

26.1.2 Not make or have any third party make changes to the software, unless the Contractor has expressly agreed to such changes in writing;

26.1.3 Promptly notify the Contractor of any errors and other malfunctions that occur during the use of the software, describe them as precisely as possible, and, at the request of the Contractor, provide system error reports, system logs, test results, and other documents suitable for illustrating the defect, and be available for further inquiries;

26.1.4 Provide suitable test data upon request of the Contractor, if testing is required. This does not apply if the Client allows the Contractor to perform the tests on the Client's system or if the parties agree on the Client conducting the tests;

26.1.5 Inform the Contractor in writing (e.g. by email) of any changes to the operating system software and other software required for the use of the program ("environmental software");

26.1.6 Inform the Contractor in writing (e.g. by email) of any changes to the hardware configuration and installation, as well as the location where the program is installed ("installation location"). The Contractor may refuse to continue maintenance at the new installation location for good cause.

26.2 If necessary, other work on the Client's IT system shall be suspended or discontinued during the provision of maintenance services.

26.3 The Client shall provide the conditions necessary for remote maintenance of the software as described on the Contractor's website at https://aquacloudio.zohodesk.eu/portal/en/kb/articles/remote-support.

27. Service Desk

27.1 The Contractor receives requests for services from the Client under this maintenance agreement (hereinafter "notifications") via email.

27.2 Proper notifications, including the complete processing history, are documented in a help desk system and assigned a ticket by the service.

27.3 The Contractor will respond to notifications in accordance with the response time specified in Section 28, during the following maintenance hours: Mondays to Fridays from 9:00 a.m. to 5:00 p.m., except for statutory holidays in North Rhine-Westphalia, Shrove Monday, December 24th, and December 31st of each year (hereinafter "maintenance hours").

28. Errors resolution

28.1 The Contractor undertakes to respond to error notifications within the response times described below, and inform the Client about the preliminary error analysis and possible workarounds for immediate assistance.

Error Category	Error Class*	Response Time
Error Category 1	Critical Error	12 Hours
Error Category 2	Medium Error	40 Hours
Error Category 3	Minor Error	No Guarantee

*The error classes used in this table are defined in Section 28.3.

28.2   The response time starts from the receipt of the error notification by the Contractor. The error notification must at least include the affected program component, the input made, the current environment software, and the software's reaction, and must be made in accordance with Section 27. The response time only runs during the maintenance hours. Notifications received outside of the maintenance hours are considered received at the beginning of the next maintenance period. The response time ends with the feedback to the Client.

28.3   The classification of an error into error categories shall be done as follows:

28.3.1 A "critical error" exists when an important functionality of a program component or the entire system is significantly disrupted, to the extent that the essential functionality or the entire system cannot be used or can only be used with unreasonable effort.

28.3.2 A "medium error" exists when the functionality of a program component is impaired, but the overall system can still be used without unreasonable effort to bypass the error in daily business operations.

28.3.3 A "minor error" exists when an error only affects the layout or has no significant impact on the functionality of a program component, so that the program component and the entire system can be used as intended.

28.3.4 If the Contractor and the Client cannot agree on the categorization of an error, the error shall be categorized as the lesser error category in case of doubt.

29.   Help Desk

The Client has the option to receive user support via a help desk hotline (+49(0)221 – 68943082). The help desk is always chargeable, including the resolution of user errors.

The help desk is available from Monday to Friday, 09:00 – 17:00 CET, except for legal holidays in North Rhine-Westphalia, Rose Monday, December 24th, and December 31st of each year.

30. Compensation

30.1 The remuneration for maintenance services will be calculated annually, starting from the beginning of the second year after the acquisition of the software (i.e., one year from the day of delivery, i.e., provision of the download link), and is to be paid in advance upon invoice. The invoices are due for immediate payment without deduction.

30.2 The Contractor calculates the maintenance fee as stipulated in the individual contract, depending on the number of licenses acquired. If the number of licenses acquired changes, an adjusted maintenance fee will be calculated accordingly.

30.3 In case of payment default exceeding three months, the Contractor is entitled to terminate the contract with immediate effect without further notice.

31. Service termination

31.1 The individual contract comes into effect through acceptance of the offer by the client and the corresponding order confirmation by the contractor.

31.2 The contractor's obligation to provide maintenance services under this contract begins at the time specified in the individual contract ("Contract Start Date"). Unless otherwise specified in the individual contract, this contract has a duration of 12 months from the Contract Start Date. After the expiration of this minimum contract duration, the contract will automatically renew for another year, unless either party gives written notice of termination three months prior to the expiration of the contract term. The timeliness of the termination is determined by the receipt of the declaration by the other party.

31.3 After termination of an individual contract, the client may enter into a new individual contract (a so-called "late renewal") for software maintenance within 12 months after the expiration of the last contract term. A late renewal incurs an additional fee of 50% for the first 12 months compared to the list price for software maintenance. If there has been no valid contract for software maintenance for more than 12 months, a renewal is not possible.

31.4 Either party may terminate this contract with immediate effect for good cause. Good cause exists in particular if:

(a) the fulfillment of the contract becomes legally or factually impossible or economically unreasonable for reasons not attributable to the terminating party,

(b) the other party fails to fulfill its material contractual obligations despite prior warning within a reasonable period of time. Such a material breach of contract occurs when the client is in arrears with an amount equivalent to two monthly payments. The right to terminate is not forfeited if only partial payment of the outstanding amounts is made.

(c)   the fulfillment of the obligations under this contract is jeopardized due to a deterioration in the financial situation of the other party. A deterioration in financial situation exists in particular if the other party is repeatedly in default with its performance for more than 10 days, or if an attempt to enforce a claim against the other party was unsuccessful.

31.5   All terminations must be in writing.

III.   SOFTWARE RENTAL

If the subject matter of the individual contract is the rental of software and operation on own servers, the provisions of this Section B.III apply.

32.   Subject matter

32.1   The subject matter of this contract is the time-limited provision of the software "aqua" (hereinafter referred to as "Software") described on the contractor's website (https://aqua-cloud.io) in object code. The contractor also provides the client with the accompanying user documentation in electronic form.

32.2   The contractor makes the software available for download over the internet. The download link will be provided to the client after full payment. Delivery of the software on a physical data carrier is not part of the contract, unless expressly agreed upon in the individual contract for the delivery of a backup copy of the software on a physical data carrier.

32.3   Installation shall be carried out by the client, unless otherwise stipulated in the individual contract.

32.4   The client shall not be entitled to a copy of the source code of the software or any other access to such source code.

33.   Usage rights

33.1   The Contractor grants the Client the right to use the server software described in the offer as part of the license model for the duration of the contract for their own purposes. The use for their own purposes allows for use by the companies mentioned in the individual contract. This also applies to any upgrades and updates (new versions of the software with or without new functionality) provided by the Contractor during the term of the contract. If the Client has acquired a concurrent user license as part of the agreed license model, they may install the software on multiple devices; however, simultaneous use is only permitted for the number of licenses acquired.

33.2 The user documentation mentioned in Section 32.1 may be printed and duplicated by the Client for use in accordance with Section 33.1. Transfer to third parties outside the Client's company (as per Section 33.1, sentence 2) is prohibited.

33.3 The Contractor warrants that the software is free from third-party rights that would restrict or exclude use in accordance with the contractually agreed scope. If the contractual use of the software is impaired by third-party intellectual property rights, the Contractor has the right, to the extent reasonable for the Client, to either modify the software so that it falls outside the scope of protection without significant limitations on use, or to obtain the authorization for the software to be used in accordance with the contract without additional costs to the Client. If the contractual use of the software is impaired by third-party intellectual property rights without any fault on the part of the Contractor, the Contractor may refuse the affected services. The Contractor will promptly inform the Client of this and provide them with suitable access to their data. In this case, the Client is not obligated to pay. Other claims or rights of the Client remain unaffected.

33.4 The access to the software download provided to the Client must be protected against unauthorized access by third parties. The Client's employees must be informed of compliance with the present contract conditions.

33.5 If a backup copy has not been provided according to Section 32.2, the Client is authorized to create one (1) machine-readable copy of the software for backup purposes. When creating the copy, the Client must ensure that the notice "Backup Copy" is affixed to the copy in machine-readable form and/or in plain text. The Client must ensure that the computer program is not backed up or copied as part of other data backups.

33.6 Serial numbers, copyright notices, or other program identification features, if any, must not be removed. The same applies to the suppression of the display of corresponding features on the screen.

34. Remuneration and Payment Terms

34.1 The Client shall pay the agreed remuneration as per the individually agreed usage model in advance on a yearly basis (12 times the monthly base fee). In the event of termination of the contract during the year, the prepaid fees shall be refunded pro rata. In the event of the contract commencing during the year, the pro rata fees shall be payable in advance.

34.2 The Contractor is entitled to increase the remuneration in line with its own cost increases. However, the remuneration shall not increase by more than the consumer price index for Germany from the date of contract conclusion. Any intended price adjustment shall be

notified to the Client in writing at least one month prior to the effective date of the price adjustment.

34.3 If the Client fails to pay as agreed, the Contractor may refuse to provide the service, e.g. in the case of significant payment delay, block the Client's access to the software for the duration of the delay. The Client shall remain obliged to pay the remuneration in this case.

35. Service Duration, Termination and Exit Management

35.1 The Contract shall come into force upon signature by the Contracting Parties. The minimum rental period for the software in the rental model is twelve (12) months, starting from the date of provision of the download link (see Clause 32.2).

35.2 The contractual relationship may be terminated by either Party at the earliest upon expiry of the contract term, with a notice period of three (3) calendar months. Otherwise, the contract shall be automatically extended for twelve (12) months.

35.3 Either Party may terminate this contract at any time for cause. Cause shall be deemed to exist, in particular, if:

(a) Performance of the contract becomes legally or factually impossible or economically unreasonable for reasons not attributable to the terminating Party;

(b) The other Party fails to fulfill its material contractual obligations despite prior written warning within a reasonable deadline. Such material breach of contract shall be deemed to exist if the Client is in arrears with an amount equivalent to two monthly payments. Partial payment of outstanding arrears shall not affect the right to terminate.

(c) The fulfillment of obligations under this contract is endangered due to a deterioration in the financial circumstances of the other Party. Deterioration in financial circumstances shall be deemed to exist in particular if the other Party is in default of its obligations for more than 10 days on a repeated basis, or if an attempt to enforce against the other Party has been unsuccessful.

35.4 If the Client is in default of payment pursuant to Clause 35.3(b), the Contractor shall be entitled to demand immediate payment of a lump-sum damages in the amount of one quarter of the monthly fees remaining until the end of the regular contract term, unless the Contractor can prove a higher damages or the Client can prove lower damages. The Contractor reserves the right to assert further claims due to default in payment.

35.5 All terminations must be in writing.

35.6 The Parties undertake to return or, upon instruction of the respective Party, to destroy all documents, written materials, records or concepts provided to each other during the term of the contract immediately and without request upon termination of the contract.

35.7 Upon termination of the usage relationship, regardless of the reason:

- The Client shall no longer be entitled to use the software. The rights granted to the Client by the Contractor under these terms and conditions shall automatically revert to the Contractor.

- The Client shall be obliged to delete all copies made and immediately cease using the software.

- The Client shall be obliged to delete all access data and any printed documentation. The Contractor shall be entitled to request an affidavit in this regard.

36. Modification and Compilation

36.1 Unless expressly permitted in this Master Agreement or the Individual Contract, the Client is prohibited from reverse engineering the various stages of software development, including making modifications to the program; this applies in particular to the translation of the provided source code into another code form (decompilation).

36.2 Removing copy protection or similar protective mechanisms is not allowed.

37. Claims for Defects

37.1 The Contractor shall provide warranty for defects in the Software in accordance with the provisions of this Section 37.

37.2 The quality of the Software is exclusively and conclusively determined by the program description on the Contractor's website at https://aqua-cloud.io. The Contractor does not provide any warranty for the quality, durability, or any other guarantees with respect to the Software, unless expressly and in writing designated as such in the individual contract.

37.3 A defect for which the Contractor is liable does not exist if the error is based on the use of hardware and environment software that does not meet the system requirements described on the Contractor's website (https://aquacloudio.zohodesk.eu/portal/en/kb/aqua-wiki-en/installation/system-requirements). Rights for defects also do not exist for defects resulting from program changes that have not been made, authorized, or approved by the Contractor. If the Client installs the Software themselves, no rights for defects arising from installation-related errors incurred during or after installation shall exist, unless the error is based on faulty installation instructions provided by the Contractor.

37.4   The Contractor shall remedy material and legal defects upon timely and justified notification of defects by the Client. The Contractor is entitled to remedy the defect at its own discretion through rectification or replacement. In particular, the Contractor is entitled to provide defect rectification by delivering new program packages (patches, updates) that no longer contain the errors reported by the Client. The Client shall install such program packages themselves, if reasonable. If this is not the case, the Contractor shall carry out the installation via remote access. In that case, the Client shall grant the Contractor the necessary remote access to the installation environment of the Software. The Contractor is also entitled to provide on-site rectification at the Client's premises. If reasonable for the Client, the Contractor may provide a workaround solution for the purpose of rectification until the defect is finally resolved. In the event of a legal defect, the Contractor shall, at its discretion, either provide a legally non-defective usability of the Software or modify the Software in such a way that third-party rights are no longer infringed.

37.5   If a defect is not successfully remedied within a reasonable period of time set by the Client for reasons attributable to the Contractor, the Client may reduce the agreed remuneration by a reasonable amount. The right to reduce is limited in amount to the monthly remuneration attributable to the defective part of the performance.

37.6   In case of replacement, the Contractor is also entitled to deliver a new version of the program with equivalent functionality, unless this is unreasonable for the Client, for example, due to the requirement of a different operating system or more powerful hardware. Familiarization of the Client with a possibly modified program structure or user guidance does not generally constitute unreasonableness.

37.7   The right to withdraw from the contract for ongoing use of the Software due to defects is excluded. The right to terminate for cause remains unaffected by this.

38.   Backup of the Software and Audit

38.1   The Software, user documentation, and any existing access data must be protected against unauthorized access by third parties.

38.2   The Contractor is entitled to conduct an annual audit of the contractual use of the Software, especially with regard to qualitative and quantitative usage by the Client (Software Audit). For this purpose, the Client shall provide the necessary documents and enable an audit of the Software usage with respect to this agreement. The Contractor is entitled to conduct the audit at the Client's premises during regular business hours. The Client is obliged to grant the Contractor or a third party commissioned by the Contractor with the audit access to the business premises, provide the requested information and documents, grant access to the computers on which the Software is installed, and, upon request, grant the necessary rights to these computers, including administrator rights, in order to verify compliance with

the license agreement. The Contractor will take care to minimize disruption to the operation during the audit. The Contractor will notify the Client of the results of the audit in writing upon completion.

38.3 If the Client intends to exceed the rights granted in the respective agreed-upon license model, it must acquire the necessary usage rights for such usage against a corresponding license fee. In the event that the Client exceeds the originally granted usage rights by more than an insignificant amount (e.g. not only temporarily exceeding the permitted usage by more than 10%), it shall promise to pay a sum of money as a penalty to the Contractor. The contractual penalty shall amount to 50% of the license fee due for the excessive usage. The obligation to pay the license fee remains unaffected. If the license fee is accepted, the Contractor does not need to declare the reservation of the contractual penalty.

IV. SOFTWARE AS A SERVICE

If the subject of the offer and the order confirmation is the provision of Software as a Service (SaaS), the provisions of this Section B.IV apply.

39. Subject matter

The subject matter of this contract is the provision of the aqua software (hereinafter referred to as "Server Software") as described on the contractor's website (https://aqua-cloud.io) in the Software as a Service (SaaS) model. The contractor makes the software available for the client's use on data processing systems (servers). The client can access the Server Software over the internet and use its functionalities within the scope of this contract. For this purpose, the contractor provides the aqua Client software (hereinafter referred to as "Client Software") to the client.

39.1 The Client Software is provided for download over the internet and exclusively in object code. The client is responsible for installing the Client Software and has no entitlement to a copy of the source code of the Client Software or any other access to such source code.

39.2 Services to establish interoperability of the Server Software with programs other than those listed on the contractor's website at https://aquacloudio.zohodesk.eu/portal/en/kb/articles/agent are only provided under a separate contract between the contractor and the client.

40. Delivery and Availability

40.1 The Contractor provides the Client with the Server Software at the delivery point, which is the external firewall of the Contractor connected to the Internet, as described in the Service Level Agreement (SLA) in Appendix.

40.2 The Client is responsible for its own Internet connection, including the required data transfer rates. The Client is solely responsible for ensuring compliance with the system requirements described on the Contractor's website (https://aquacloudio.zohodesk.eu/portal/en/kb/aqua-wiki-en/installation/system-requirements).

41. Usage Rights

41.1 The Contractor grants the Client the right to use the Server Software for its own purposes during the term of the contract, as described in the licensing model specified in the offer. The use for its own purposes allows usage by the affiliated companies mentioned in the individual contract. This also applies to any upgrades and updates (new versions of the

software with or without new functionality) provided by the Contractor during the term of the contract.

41.2 The Client does not receive any reproduction rights to the Server Software and is not entitled to download and/or run the Server Software operated and provided by the Contractor on its own systems. The Contractor's Server Software is protected by copyright and all copyrights, usage rights, and other protective rights remain with the Contractor.

41.3 The Contractor warrants that the software is free from third-party rights that would restrict or exclude usage according to the contractually defined scope. If the contractual use of the software is impaired by third-party protective rights, the Contractor has the right, to the extent reasonable for the Client, either to modify the software in such a way that it falls out of the scope of protection without significant restrictions on use, or to obtain the authorization for the software to be used contractually without additional costs for the Client. If the contractual use of the software is impaired by third-party protective rights without fault on the part of the Contractor, the Contractor may refuse the affected services. The Contractor will promptly notify the Client thereof and enable the Client to access its data in an appropriate manner. The Client is not obligated to make payment in this case. Other claims or rights of the Client remain unaffected.

41.4 The Client is not entitled to make the software accessible to third parties.

41.5 The user documentation mentioned in section 13.1 may be printed and reproduced by the Client for use in accordance with section 14.1. Transfer to third parties outside the Client's company (as per section 14.1, sentence 2) is not permitted.

41.6 The access provided to the Client for downloading the Client Software must be protected from unauthorized access by third parties. The Client's employees must be informed of compliance with these contract terms.

41.7 Any serial numbers, copyright notices, or other program identification marks that may be present on the Client Software must not be removed. The suppression of corresponding marks on the screen display is also prohibited.

42. Other Obligations of the Client

42.1 The Client shall fulfill the obligations incumbent upon him for the provision and processing of services under this Agreement. In particular, the Client shall:

42.1.1 take appropriate precautions to protect the server software and server download access from unauthorized access by third parties. For this purpose, the Client shall keep the login data assigned to him and managed by him in a secure location and instruct his employees and other persons authorized to use the software accordingly. As soon as the Client has reasonable suspicion that his credentials have been obtained by unauthorized third parties or are being misused, he shall immediately notify the Contractor thereof.

42.1.2 comply with all applicable laws and regulations in the use of the server software. The Client is particularly prohibited from storing, transmitting, or otherwise publishing content that violates legal regulations, in particular third-party intellectual property rights or copyrights.

42.1.3 check data for viruses and use virus protection programs that correspond to the current state of the art before processing data with the software;

42.1.4 immediately report errors in the services provided by the Contractor according to Clause 3 of the SLA (Service Level Agreement) appendix and actively support the Contractor in troubleshooting by providing information on how and under what circumstances the error or defect occurs;

42.2 If third parties assert claims against the Contractor for the breach of obligations by the Client under this Agreement, the Client shall indemnify the Contractor from such claims and assume the defense of such claims at his own expense. The Contractor shall promptly notify the Client of any such claims and provide the Client with the necessary information to defend against such claims.

42.3 Access to the software is only permitted to the registered user for this purpose. Access by multiple users is not allowed.

42.4 If the Client violates a material obligation regulated in this Agreement, the Contractor may temporarily suspend the provision of services, i.e., block access to the software and data. Access will only be restored once the violation of the affected obligation has been permanently remedied. In this case, the Client remains obligated to pay the remuneration.

43. Claims for Defects

43.1 The contractor guarantees that the server software will meet the agreed-upon quality as per this contract, including the attachments, and in particular, the availability as promised in Attachment SLA (Service Level Agreement) will be maintained during the term of this contract.

43.2 Only the provisions of this section 43.2 shall apply in case of a shortfall in the promised availability. In the event of a shortfall in the promised availability, the client is entitled to reduce the compensation by the percentages specified in section 2 of Attachment SLA (Service Level Agreement).

43.3 The contractor shall be liable for defects in the services provided under the contract that do not affect the availability ("other defects") in accordance with sections 43.4 to 43.8.

43.4 The contractor is obligated to rectify other defects within a reasonable period of time after receiving a defect notice. In general, only reproducible defects can be rectified. Warranty claims for defects in third-party software licensed by the contractor for use by the client are excluded, unless rectification can be provided through the procurement and installation of generally available upgrades, updates, and service packs, or through service calls.

43.5 If a defect is not successfully rectified within a reasonable period of time set by the client for reasons attributable to the contractor, the client may reduce the agreed-upon compensation by a reasonable amount. The right to reduce compensation is limited in amount to the monthly compensation attributable to the defective part of the service.

43.6 The client shall cooperate free of charge in rectifying other defects and shall, in particular, provide all necessary documents, data, etc. that the contractor requires for analysis and rectification of the defects.

43.7 The client is obligated to promptly report all defects in the software as well as any disruptions occurring during its use, as described in section 3 of Attachment SLA. If the failure of the client to cooperate in a timely manner makes it impossible for the contractor to fulfill its performance obligations, the contractor shall be released from its duty to perform.

43.8 The right to rescind the contract for ongoing use of the software due to defects is excluded. The right to terminate for cause shall remain unaffected by this provision.

44. Remuneration and Payment Terms

44.1 The Client shall pay the agreed remuneration in advance, monthly or annually, based on the respective agreed usage model, as specified in the individual contract. In the event of termination of the contract during the calendar year, fees paid in advance shall be refunded pro rata.

44.2 The Contractor is entitled to increase the remuneration in accordance with their own cost increases. However, the remuneration may not increase more than the consumer price

index for Germany from the date of contract conclusion. Intended price adjustments must be communicated to the Client in writing at least one month before they come into effect.

44.3   If the Client fails to pay as agreed, the Contractor may refuse performance, e.g., block the Client's access to the software during the period of default in the case of significant payment delay. The Client remains obligated to pay the remuneration in this case.

45.   Data Protection and Data Security

45.1   The Contractor and the Client shall comply with the applicable provisions of data protection law and shall obligate their employees involved in the contract and its performance to maintain data confidentiality.

45.2   The Client is solely responsible as the data controller in accordance with the BDSG and the GDPR for the collection, processing, and use of personal data using the software provided by the Contractor under this contract, and warrants that it is authorized to do so. The Client shall indemnify the Contractor in accordance with clause 42.2 against any claims by third parties.

45.3   If the Contractor processes personal data on behalf of the Client as part of the contract, the parties shall conclude the data processing agreement listed under C.

46.   Service Duration, Termination, and Exit Management

46.1   The agreement shall come into effect upon signature by the contracting parties. The minimum term of the software rental in the SaaS model shall be twelve (12) months, starting from the date of operational readiness.

46.2   The contractual relationship may be terminated by either party no earlier than the end of the contract term with a notice period of three (3) calendar months. Otherwise, the contract shall be automatically extended for twelve (12) months each time.

46.3   Either party may terminate this agreement at any time for cause. Cause shall particularly be deemed to exist if:

(a)   Performance of the contract becomes legally or factually impossible or economically unreasonable for reasons not attributable to the terminating party.

(b)   The other party fails to fulfill its material contractual obligations despite prior warning within a reasonable period of time. Such material breach of contract shall be deemed to occur if the Client is in arrears with an amount equivalent to two

monthly payments. The right to terminate shall not be forfeited in the event of partial payment of the arrears.

(c)   Performance of the obligations under this agreement is endangered due to a deterioration in the financial situation of the other party. A deterioration in financial situation shall particularly be deemed to occur if the other party is repeatedly in default with its performance for more than 10 days or if an attempt to enforce judgment against the other party has been unsuccessful.

46.4   If the Client is in default of payment according to Section 46.3(b), the Contractor is entitled to demand immediate payment of a lump-sum damages in the amount of one-quarter of the remaining monthly fees until the end of the regular contract term, unless the Contractor can prove a higher damage and the Client can prove a lower damage. The Contractor reserves the right to assert further claims due to default of payment.

46.5   All terminations must be in writing.

46.6   The parties undertake to return or (upon instruction of the respective party) destroy all documents, papers, records, or concepts provided by each other during the term of the agreement promptly and without being prompted upon termination of the agreement.

46.7   Upon termination of the usage relationship for any reason:

•   The Client shall no longer be entitled to use the software. The rights granted to the Client by the Contractor under these terms and conditions shall automatically revert to the Contractor.

•   The Client shall be obliged to delete all access data and any printed documentation. The Contractor is entitled to request an affidavit in this regard.

46.8   In the event of ordinary termination, the Client must delete and store elsewhere all content and files stored by it before the end of the usage relationship. The Client may instruct the Contractor to store the data for a further period, which shall be subject to charge.

46.9   In the event of extraordinary termination, the Client's data shall be stored for 30 days after the end of the usage relationship, during which time the Client may download and store its data elsewhere. After 30 days, the Client's data shall be deleted unless the Client instructs the Contractor to store the data for a further period, which shall be subject to charge.

47.   Service Changes

47.1   The Contractor is entitled to modify its agreed-upon services, particularly if third parties modify their services. Changes to this agreement communicated by the Contractor to the

Client in writing shall be deemed accepted by the Client if the Client does not object to their validity within 6 weeks after receipt of the notification of changes in writing. The Contractor shall specifically notify the Client of the significance of their behavior at the beginning of the deadline. The changes to this agreement shall only be deemed accepted by the Client if such notice has actually been given. If the Client objects to the changes within the deadline, the Contractor may terminate the contract with ordinary notice at the earliest possible date or terminate it at the time of conversion if continuation of the old system is not possible.

48. Modification and Compilation

48.1   The Client is prohibited from reverse engineering the various stages of the Client Software's production, including program modification; this applies in particular to retranslation of the provided program code into other forms of code (decompilation).

48.2   Removal of copy protection or similar protective mechanisms is not permitted.

48.3   Copyright notices, serial numbers, and other features used for program identification must not be removed or altered. The same applies to suppression of the display of corresponding features on the screen.