Agreement regarding the Utilization of the Internet Software Application "OTT NetView"

Section 1: Object of the Agreement

The object of this agreement is the provision of the OTTnetView software as agreed upon in **Appendix 1** and hereinafter referred to as software for the utilization of its functionalities by providing access to an Internet server and server storage capacities as well as the granting of usage rights for the software by OTT for the customer in return for payment of the agreed-upon fee as per quotation no. _____ dated _____ .

The access authorizations for software options provided by the user name and password as well as the data volume are governed by the provisions of **Appendix 1**.

Section 2: Provision of software and long-term data storage space

1. OTT shall provide the software listed in **Appendix 1** in its respectively valid version, which is to be used in accordance with the following provisions.

2. OTT shall provide the Customer with user names and user passwords in the amount listed in **Appendix 1**.

3. OTT shall reserve storage space on its server for the data generated by the utilization of the software and/or necessary for the utilization of the software within the scope listed in **Appendix 1**. **Appendix 1** also includes all details that were agreed upon with regard to the storage space, the software, and deletion periods.

Section 3: Technical Software Availability and Data Access, Availability

OTT Hydro-Service

All details regarding availability are listed in **Appendix 2**.

Section 4: Software Usage Rights

1. The customer shall be granted a simple, non-transferrable usage right in accordance with the following provisions. This right cannot be sub-licensed and is limited to the term of this agreement.

The customer is not provided with the software. The customer shall use the software by accessing and/or launching it on the server through the Internet. Public access may be limited and/or prevented by using a user name and password. (see **Appendix 1**).

In the event OTT releases new versions, updates, upgrades or other new editions of the software during the term of the agreement, the aforementioned rights shall also apply to these.

The customer shall not be entitled to any other rights that are not specifically granted to the customer above. OTT netView is a software service.

The customer shall not be entitled to the software itself as an object with all program resources, but only to its utilization. This utilization may be public or non-public through the issuance of customer-specific user names and passwords.

2. The customer shall take all steps necessary to avoid unauthorized third party usage of the software. The Customer guarantees that the software is not misused for illegal purposes.

This shall also apply in the event governmental regulations or requirements are violated. In this context, OTT would like to emphasize that it shall take immediate action, if OTT learns that the utilization of the provided services violates any legal regulations.

In this case, OTT shall be entitled to block and delete the illegal activities. OTT shall be entitled to terminate the contractual relationship without notice, if a customer acts illegally in order to ensure that no further violations take place. The right to assert claims for damages remains reserved.

3. The customer owns the data and may also copy this data by exporting it to an external storage space.

Section 5: Compensation

1. The compensation for the usage authorization services to be rendered with regard to the software and the making available of storage space including data backup is listed in **Appendix 1**. In the event the customer has ordered other options, their compensation shall also be listed in **Appendix 1**.

2. The fees listed in **Appendix 1** are payable yearly from the date the service is provided. They are billed in advance, and are payable on the third to the last work day of the year. If the customer has legitimately terminated the agreement without notice, a prorated portion of the fee shall be reimbursed.

3. OTT is entitled to increase the fees listed in **Appendix 1** after the starting date of the agreement by announcing the increase, which will take effect on the first of the following year, in writing, provided and to the extent the costs for duly executing the agreement have increased. The customer shall have the right to terminate the contractual relationship in writing with a notice period of three months following receipt of the announcement.

Section 6: Customer Obligations

The customer shall treat all usage and access authorization provided to the customer or its users including the agreed-upon identification and authentication safeties as confidential, shall protect them from third party access, and shall not disclose them to unauthorized third parties. The customer shall inform OTT immediately, if there is the possibility that unauthorized persons have obtained information about access information and/or passwords. The customer shall not misuse the exchange of electronic information, which is possible within the context of the contractual relationship and/or the usage of the software, for sending data and information to third parties without having been requested to do so. The customer shall also obligate all authorized users to comply with the provisions of this agreement that apply to them. The customer may, provided that and to the extent it has the technical abilities to do so, regularly backup all data stored on the server by downloading such data. OTT's data backup obligation shall not be affected by this provision.

Section 7: Data Security, Data Protection

1. OTT guarantees the security of the data saved by the customer under the data protection laws and shall respect all applicable provisions of the Federal Data Protection Act and the German Telemedia Act.

2. OTT shall treat all customer information and data it has access to within the context of this contractual relationship as confidential.

Section 8: Liability, Liability Limits

1. OTT shall only be fully liable for intent and gross negligence, also by its legal representatives and executives. With regard to a culpability of other vicarious agents, the liability is limited to the annual fee and to those damages that could have been anticipated and are typical for this type of contractual relationship.

2. The liability for data protection only extends to the last backup copy. Backup copies shall be made on a daily basis. The liability for loss of data only applies to data already sent to and saved on the server.

Section 9: Term and Termination of the Agreement

1. The contractual relationship shall commence upon conclusion of the agreement. It is indefinite, but shall be valid for at least one year.

This agreement shall automatically renew on a year-to-year basis. The agreement can be terminated by giving three months notice prior to expiry of the one year period. Annual accounts will be invoiced at the beginning of the renewed agreement period.

2. It is only possible to terminate the agreement without notice due to or in connection with a breach of duty after the other party was previously warned and provided with a reasonable grace period of no less than 10 work days.

Notwithstanding the provision above, OTT may terminate the agreement without having to comply with a notice period, if the customer's fee payment is more than 2 months late.

Section 10: Obligations at and after the Termination of the Agreement

At the end of the contractual relationship, the customer may export its data from the server to get possession of the data that had previously been stored on the server. The customer shall ensure that any data that had previously been stored for the customer is transferred at the end of the notice period or, in the event of a termination for cause, within ten days.

OTT shall be authorized to delete the data after expiration of the defined periods. OTT shall in neither case be held liable for any loss of data that occurs after the expiration of said period. OTT shall not be liable for the customer's data transfer.

Section 11: Force Majeure

Neither of the parties shall be obligated to fulfill its contractual obligations in the event and for the duration of force majeure. Particularly the following circumstances are to be considered force majeure within the meaning of this provision:

Fire/explosion/flooding for which the contracting party is not responsible, labor disputes that were not culpably caused by the party and that last for more than six weeks, and technical Internet problem on which the party has no influence.

Section 12: Final Provisions

1. The contractual relationship is subject to German substantive law. The UN Convention on Contracts for the International Sale of Goods does not apply.

2. All appendixes as amended shall be an integral component of this agreement.

3. There are no side considerations outside of this agreement and its appendices. Any amendments or addendums to this agreement and its appendices must be made in writing to be legally valid. This also applies to a waiver of this written form requirement.

4. In the event individual provisions of this agreement are invalid, the overall validity of the remaining contractual content shall not be affected.

5. If, in the course of the practical application of this agreement, it is found that there are loopholes the contracting partners had not foreseen, or if the invalidity of a provision is determined in a legally valid manner or jointly by both parties, the parties pledge to full said loophole or replace said invalid provision in a manner that appropriately takes the facts and the economic intent of this agreement into consideration.

6. The exclusive place of jurisdiction shall be Kempten/Allgäu, provided there are no rules that require a different place of jurisdiction.

Principal

Street   _____

ZIP, Place _____

Organization/Company:

_____

Name:

_____

Signature:

_____

Date:

_____

OTT Hydromet GmbH

Ludwigstr. 16

87437 Kempten

Name:

_____

Signature:

_____

Execution date:

_____

Appendices

<u>Appendix 1</u>

Software

- Access protection through user names and user passwords
  no
  yes

- Limitation of the data export function through user name and password
  no
  yes

- Number of user names (up to 10) _____

- List of users
  (*Please enter user names and user passwords here*)

  User name: Password:

  _____   _____

  _____   _____

  _____   _____

  _____   _____

  _____   _____

  _____   _____

  _____   _____

  _____   _____

  _____   _____

  _____   _____

- One-time setup fee for one customer account: as per quotation mentioned under section1.

- One-time setup fee per measurement station and per sensor channel:
  as per quotation mentioned under section 1.

- Annual flat rate as per:
  ___ netView account(s)
  ___ measuring site(s)
  ___ sensors
  ___ extension packet(s) with more than 25.000 transmitted values/month

  as per quotation mentioned under section 1.

  The extension packet is defined by the number of transmitted measured values/month. The data volume is checked at the end of the year. Increased transmitted measurements may necessitate an upgrade to the extension packet.

- If not differently agreed-upon, OTT reserves the right to delete all data older than 2 years.

- Data management in excess of two years is billed at an annual flat fee of EUR 300.00 + VAT.

Appendix 2

1. Server Availability

By OTT guaranteed server availability per year: at least 99.5%

2. Availability of OTT HydroService

Mondays to Thursdays: 8:00 - 12:00 Uhr / 13:00 - 17:00 Uhr
Fridays: 8:00 - 12:00 Uhr / 13:00 - 15:00 Uhr