

D-Link Assist Service (DAS) End-User Terms and Conditions

1. Subject Matter

- 1.1. Upon purchase of a fee-based DAS service pack the end-user receives various services that enable them to continuously operate their D-Link equipment covered under the terms of the service contract. The End-User Terms and Conditions outlined in this document serve to regulate and define the scope of such services as D-Link provides (whether directly or via a third party) for the end-user. The end-user in this context is defined as the person or company activating a DAS service contract to the relevant D-Link product.
- 1.2. Throughout this document the term "D-Link" may refer to D-Link (Europe) Ltd., any of its subsidiaries and/or any of D-Link's contracted third parties.
- 1.3. DAS is a service designed to restore the functionality of specific D-Link equipment either by repair or replacement of the covered product. D-Link renders such service in accordance with the specific service pack purchased.
- 1.4. The service involves site-based service deployment for the purpose of removing faults by service repairs, replacing component parts or complete products as may be determined by D-Link.

2. Scope of Services

- 2.1. The services product range offered by D-Link is defined by: -
 - 2.1.1. The response time indicated on the specific DAS service pack purchased and
 - 2.1.2. The service contract that lists the product(s) covered
- 2.2. D-Link only provides services covering original D-Link products that have been purchased from authorized distributors or specialist dealers in Europe and used exclusively within Europe (see 2.17 below for the list of European Countries covered by D-Link Assist Service). Such devices shall be registered by the end-user with D-Link and will be listed in the DAS service contracts issued by D-Link.
- 2.3. Depending on the technical defect, the services provided by D-Link may include any of the following as determined solely by D-Link: remote diagnosis, error removal, upgrade of a recommended firmware, provision of replacement products or replacement components parts for the products included in the service contract.
- 2.4. D-Link products that are found to be 'Dead on Arrival' (DOA) within 30 days of end-user purchase and installation may be exchanged via the standard warranty terms. However, should the end user wish to utilize the DAS service, for example to benefit from the speed of service, then D-Link do not guarantee to exchange faulty products with new but may instead exchange with a refurbished product.
- 2.5. From the time that the confirmation document and service contract are sent to the end-user and within the restrictions of clause 2.4 above, D-Link shall require two (2) business days to deliver on its DAS service. Only from such time forward shall the end-user have any claim for the provision of the services agreed upon.

- 2.6. The end-user shall register all service requests centrally with D-Link via its web-based Self Service Portal or by contacting the D-Link Help Desk in the region that the product is installed.
- 2.7. 9x5xNBD (Next Business Day): indicates service and support with coverage nine (9) hours a day, five (5) days a week, with a next business day service response time. D-Link will respond onsite and rectify the hardware problem as per the logged call report provided by the D-Link help desk. This on-site service is available within the normal hours of operation between 08:00 and 17:00, Monday to Friday (excluding public holidays).
- 2.8. 9x5x4: indicates service and support with coverage, nine (9) hours a day, five (5) days a week, with a four (4) hour service response time from when the call is opened with D-Link. D-Link will respond onsite and rectify the hardware problem as per the logged call report provided by the D-Link Help Desk. This on-site service is available within the normal hours of operation between 08:00 and 17:00, Monday to Friday (excluding public holidays).
- 2.9. 24x7x4: indicates service and support with coverage twenty four (24) hours a day, seven (7) days a week, with a four (4) hour service response time. D-Link will respond onsite and rectify the hardware problem as per logged call report provided by D-Link Help Desk (no public holiday exclusions apply to this service).
- 2.10. Extended Warranty: indicates a three year extension to the standard warranty terms and does not include any of the terms outlined in 2.7, 2.8 or 2.9 above.
- 2.11. Installation Service: indicates that D-Link shall supply trained technicians to install the DAS covered D-Link products into the end-user's premises. As installations are subject to varying requirements that may include infrastructure, geographic or other specific conditions, a detailed quotation shall be agreed in advance between D-Link and the holder of the DAS service. The quotation may include amendments to these Terms and Conditions that shall be agreed in advance of the installation work being completed.
- 2.12. End-users holding a 4-hour response DAS service contract (see 2.8 & 2.9 above) can expect the following processes to take effect when reporting a D-Link product failure:
- 2.12.1. D-Link will ensure that the fault is identified and the best outcome is arrived at via the D-Link Help Desk support team. The D-Link Help Desk will need to communicate with a technically competent person at the end-user's site. The time for failure identification will not exceed 1 hour
 - 2.12.2. The 4 hour response time will be deemed to have commenced once the fault has been diagnosed by the D-Link Help Desk or after 1 hour from first contact whichever be the earliest
 - 2.12.3. If an engineer is required to attend to the end-user's site it shall be to the location specified at the time of activation. If the fault is diagnosed as firmware based, the updated firmware shall be delivered by making it available on D-Link's FTP server or by sending it to the end-user via e-mail to the e-mail address specified by the end-user. at the time of registration
- 2.13. If a device or software listed in the service contract fails, and remote fault rectification is not possible, immediate measures shall be taken to replace the equipment on site within the contractually agreed response time following the error report.
- 2.14. Events classified as force majeure shall result in the suspension of the duties of the parties hereto for the duration of such service-impairing events. In such cases, D-Link may request an appropriate postponement of the service deadlines and a reasonable restart period. D-Link shall inform the other party in writing immediately of the expected duration of the suspension and the intended procedure for reinstatement following the end of the service-impairing event.

- 2.15. D-Link provides its DAS service in Europe (see 2.17 below for the list of European Countries covered by D-Link Assist Service). Service to certain areas such as islands, remote mountain regions, as well as any other regions, areas, or buildings that are generally known to be difficult to access, may not be included (Please refer to www.dlink.eu/support or call your local D-Link office for additional information). It is incumbent on the end-user to determine whether or not D-Link can fulfil the service in a given area or region before purchasing a DAS service.
- 2.16. The DAS service may include product repair, product replacement, firmware upgrade, and when applicable, enduring the visibility of the covered item on the end-user's network. It excludes reinstalling any end-user client configurations.
- 2.17. The DAS service in Europe is limited to the following countries: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Monaco, Netherlands, Norway, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom, The Vatican. Restrictions to the service level may apply as shown in 2.15 above.

3. Conditions of Service

- 3.1. The contractual relationship between the end-user and D-Link is based on the following documents:
- 3.1.1. These Terms and Conditions
 - 3.1.2. The DAS contract issued electronically by D-Link that lists the exact equipment with serial number(s) and location(s) that D-Link is to service under the service pack purchased
- 3.2. Whenever D-Link hardware products are purchased from sources other than directly from D-Link, such purchase shall constitute a separate agreement between the two contracting parties that shall have no bearing on these Terms and Conditions of Service.
- 3.3. The service provided under the DAS service agreement shall be provided only for the registered D-Link equipment and only at the end-user's location as indicated in the registration documentation except in the circumstances outlined in Section 4 of these Terms and Conditions.
- 3.4. All DAS service packs must be activated within 60 days of purchase otherwise the service pack will expire and be invalid. DAS service packs can only be activated against registered D-Link business products. Registration of the product and activation of the DAS service pack is completed via the D-Link Self Service Portal.

4. Changes

- 4.1. The electronic Service Contract, which forms part of these Terms and Conditions of Service (3.1.2), specifies all hardware, software, and the relevant locations for which D-Link shall provide the corresponding hardware repair or replacement services.
- 4.2. If the end-user wants to operate equipment listed in the Service Contract from a different location, they shall inform D-Link in advance and in writing with no less than thirty (30) business days' notice. However, such notice of change shall not be deemed to have been accepted by D-Link until confirmed in writing by D-Link to the end-user. Written communication in respect of this clause may include e-mail as well as postal or courier delivered mail.
- 4.3. The end-user shall bear any expenses and follow-up costs in connection with a change in location.
- 4.4. With regard to changes to location communicated by the end-user, D-Link shall be entitled to terminate the DAS service agreement if the new location of the device or software cannot be reached within the guaranteed response time.

- 4.5. If there shall be a change of ownership of the products covered by the DAS service agreement other than by acquisition through a legal purchase or takeover of the end-user's business or trade, the DAS service agreement becomes immediately null and void.

5. **Exclusion**

- 5.1. The following shall be excluded from the range of DAS services: -
- 5.1.1. Any D-Link product that does not have an activated DAS service product registered against it
 - 5.1.2. Measures to remove faults or damage not resulting from device-based faults but from incorrect operation or other improper handling
 - 5.1.3. Analysis and remedy of errors caused by installed equipment that is not covered under the service contract
 - 5.1.4. Faults caused by incorrect repairs carried out by persons not authorized by D-Link, or damage caused by any person at the end-user's IT/TC facility. This is particularly true of any modifications and changes to hardware/software, attempted repairs, and improper cleaning
 - 5.1.5. Damage and/or faults caused by external factors, such as incorrect restart following power outage, force majeure, or willful damage to property
 - 5.1.6. Damage and/or faults caused by unusual physical, chemical, electrical, or thermal loads
 - 5.1.7. Damage and/or faults caused by effects stemming from installations, devices, or accessories not included in the service contract
 - 5.1.8. Service for devices whose location has been changed without the advance notification to D-Link and without D-Link's written acceptance of the change of location (see Section 4 of the Terms and Conditions)
 - 5.1.9. Assembly and removal of expansions, accessories, options, and/or additional equipment as well as consumables (e.g., batteries, data carriers, etc) unless this is part of a DAS Installation and Configuration service agreement
 - 5.1.10. The DAS service specifically excludes reinstalling the end-user's own client configurations
 - 5.1.11. The DAS service specifically excludes reinstatement or recovery of lost end-user data. D-Link will not be held liable for any data protection end-user claims related to disk storage within a D-Link product. It is the end-user's entire responsibility to ensure that all end-user data is secure and backed-up prior to a DAS service intervention
 - 5.1.12. If a failure of the product has already occurred at the time of purchase of the DAS contract, such failure will not be covered under the DAS contract
 - 5.1.13. DAS service contracts must be purchased within ninety (90) days of the purchase date of the D-Link product for which they are intended to provide service cover
 - 5.1.14. All DAS service packs must be activated within 60 days of purchase otherwise the service pack will expire and be invalid. DAS service packs can only be activated against registered D-Link business products. Registration of the product and activation of the DAS service pack is completed via the D-Link Self Service Portal.

- 5.2. If it is found during or after a repair or replacement of a DAS-covered product that the fault was caused by one of the aforementioned issues, the end-user shall be obligated to pay D-Link an appropriate fee based on prevailing labour rates, time and materials, even if D-Link was not contracted or will not be contracted specifically to carry out such work.

6. End-User's Duty to Cooperate

- 6.1. At the request of D-Link, the end-user shall assign a responsible person as a contact person and as support for the DAS service personnel on site.
- 6.2. The end-user shall assign appropriately trained personnel to use and maintain their D-link products covered by a DAS service.
- 6.3. The end-user shall assist the service personnel who are sent to perform any remedial work undertaken under the DAS service agreement. In particular, D-Link shall have unhindered and direct access to the covered products without having to use ladders, stools or any other specialized access equipment. In addition DAS service personnel shall not be required to move furniture, other equipment, stored materials or any other objects while on the end-user's premises. The end-user shall provide adequate working space and facilities for the DAS service personnel including heat, light, ventilation and electric current and outlets. These requirements shall also apply to subcontractors and authorized service partners commissioned by D-Link.
- 6.4. It is incumbent on the end-user to make the covered product available to the DAS service personnel for removal at the time and place of intervention and no later. Failure to comply with this requirement will be considered good cause for D-Link to rescind the existing DAS service contract with the end-user. Moreover, D-Link or its authorized service partner reserve the right of invoicing the end-user for the full new product price of the equipment to be recovered.
- 6.5. The end-user shall provide D-Link with all passwords and login information for the devices, programs, and carrier systems (e.g., operating systems, etc.) specified in the service contract that are necessary to perform the service work.
- 6.6. The end-user shall take all necessary and reasonable measures to facilitate the identification of errors and their causes.
- 6.7. If a remote diagnosis by D-Link is useful in connection with the devices concerned, the end-user shall provide, at their expense, the personnel, technical, and organizational prerequisites for such remote diagnosis.
- 6.8. If it is necessary to implement a different firmware on any replacement device supplied by D-Link, such software will be supplied on the D-Link FTP server or via e-mail to the e-mail address specified by the end-user at the time of registration. The end-user shall provide the personnel, technical and organizational prerequisites necessary to receive such software and to implement it on the devices immediately or to allow the D-Link service personnel to achieve the same if an onsite visit is required.
- 6.9. The end-user shall undertake to test the functionality of the affected devices to the best of their knowledge and ability before submitting a fault report to D-Link. If, after a replacement product or component has been supplied, a functional test of the device returned by the end-user shows the device to be functioning to standard D-Link specification, D-Link will reserve the right to document the costs incurred in connection with the replacement service rendered and to invoice such costs to the end-user.

- 6.10 The end-user shall notify D-Link of any faults covered by the DAS service agreement immediately or as soon as practicable after discovery of any such fault. The end-user shall provide D-Link with a detailed error description and cooperate in any subsequent requests for information by D-Link so as to obtain full information.
- 6.11 Replacement parts or units supplied under the DAS contract will be new or refurbished parts or units equivalent to new in performance. Any such replaced parts or units become the property of D-Link and must be returned to D-Link or their authorised service partner. D-Link may charge the end-user at the list price value for replaced parts or units that are not returned as required.

7. Compensation

- 7.1. Services rendered that are outside of the scope of the DAS service agreement, as well as any additional personnel, travel, accommodation, and material costs, will be invoiced independently of the purchase price of the service pack in accordance with such rates as are in effect at that time on the basis of a separate offer from D-Link.
- 7.2. If DAS service personnel are required to return to the end-user's location due to unavailability of the required end-user personnel, equipment, working space and/or facilities or an unwillingness or inability to assist the DAS service personnel as outlined in Section 6 of the Terms and Conditions, D-Link or its authorized service partner shall invoice the end-user, independently of the DAS service purchase price and according to the prevailing labor and expense rates that are in effect at the time, for the incurred additional services provided.

8. Term of the Agreement

- 8.1. The term of these Terms and Conditions is based on the valid period of the DAS service contract purchased.
- 8.2. The right of either party to terminate these service agreements for good cause shall remain intact. A good cause for termination shall be present if one of the contracting parties is in breach of its obligations under these Terms and Conditions due to gross or willful negligence.
- 8.3. If D-Link terminates this agreement for good cause, or if the end-user terminates the agreement prior to the expiry of the agreed minimum term, there shall be no obligation for D-Link to refund any proportion of the DAS cost.
- 8.4. Termination of this agreement will only be accepted as valid if written communication has been entered into between the two parties with at least thirty (30) business days' notice.

9. Operation of the DAS Service

- 9.1. If the end-user identifies a malfunction in a device or software covered under a DAS service agreement, they shall report the problem to the relevant D-Link Help Desk or register the issue via the D-Link Self Service Portal. From such time, D-Link will take the necessary steps to remove the defect in accordance with these Terms and Conditions.

- 9.2. If it is necessary to replace hardware, D-Link service personnel will order a preliminary replacement device after identifying the hardware defect. It is from this time forward that the response time defined in the DAS contract (e.g., four (4) hours) shall apply (see Clause 2.12 in the Terms and Conditions). The replacement device shall be delivered to the location specified by the end-user in the DAS service contract. Software shall be delivered by making it available on the FTP server of D-Link or by sending it to the end-user by e-mail to the e-mail address specified by the end-user at the time of registration. D-Link shall attempt to provide the end-user with a device of similar design and operational parameters. However, D-Link reserves the right to supply the end-user with a device that is identical in the substantial technical parameters even though this may be by providing a product of a different class or design.
- 9.3. The cost of shipping the replacement device to the end-user location specified in the DAS Service Contract shall be borne by D-Link.
- 9.4. Upon expiry of the covered product's lifespan (End of Life), and whilst the DAS service agreement is still within its validity period, D-Link also reserves the right to supply or use replacement devices and/or software of identical functional quality.

9.5. Warranty of the DAS Service

9.5.1. Hardware

- 9.5.1.1. The entire repair, replacement or installation process for hardware shall be completed within the term of the DAS service contract acquired. Products repaired or replaced under this service contract shall continue to be subject to the original service period, i.e. replacement with a new or refurbished device or components shall not extend the service period
- 9.5.1.2. D-Link shall not be obligated to replace or repair hardware if a fault is caused by (a) operation or handling of the devices that is not in accordance with the written requirements of D-Link supplied with the original purchase, (b) the end-user making changes to the device without the prior approval of D-Link, (c) the connection of the device under the service agreement to other devices by means of an interface that does not meet the specifications or does not meet the terms and conditions of use or connectivity, (d) or changes made by a third party that has not been authorized by D-Link for such purpose

9.5.2. Software

- 9.5.2.1. Upon notification of a fault as outlined in 9.1 above, D-Link will begin the troubleshooting process via its technical personnel and provide the end-user with assistance in resolving the faults. The end-user shall heed such recommendations in order to reduce the probability of a reoccurrence of a similar error, and to minimize the necessity to send service personnel to the end-user's site
- 9.5.2.2. The repair, replacement or installation process for software shall be completed within the term of the DAS service pack purchased. Software repaired or replaced under this service pack shall continue to be subject to the original service period, i.e., replacement with new software shall not extend the service period

- 9.5.2.3. D-Link shall not be obligated to correct software errors if they are caused by (a) the end-user's failure to comply with the terms and conditions of the software license, (b) integration with other software or hardware without the prior approval of D-Link, (c) the end-user's failure to handle the software properly and/or in accordance with the manufacturer's user instructions, (d) an intervention of a third party that has not been authorized by D-Link for such purpose, (e) or changes made to the software that have not been approved by D-Link

9.6. Other Provisions

- 9.6.1. Any defects or errors that occur during the warranty period shall be remedied by D-Link. There shall be no warranty to such extent as the end-user themselves modifies the products or causes a third party to modify the products if it cannot be ruled out that such modifications caused the defect
- 9.6.2. The end-user's own maintenance, changes, or input of user data by personnel of the end-user or by a service provider commissioned by the end-user shall result in the loss of warranty claims and service coverage if any such actions are the cause of product or software failure
- 9.6.3. D-Link and its agents will make all reasonable efforts to attend the end-user's premises to effect service under the provisions of the DAS service purchased. It shall not form part of these Terms and Conditions that failure to attend, for whatever reason, shall give rise to any form of claim against D-Link or its agents

10. Liability

- 10.1. Unless the following provisions contain any contrary arrangements, financial claims of the end-user – regardless of the legal grounds – shall be excluded from cover under the DAS service agreement. Therefore, D-Link shall not be liable for damage that is not directly related to the service rendered. In particular, D-Link shall not be liable for loss of income or other financial losses of the end-user.
- 10.2. Such waiver of liability shall not apply if substantial contractual obligations have been breached or if the damage is caused by gross or willful negligence on the part of D-Link or its agents.
- 10.3. D-Link shall not be liable for any loss of data or its recovery, under any of the provisions contained in these Terms and Conditions.
- 10.4. The above liability limitations shall apply mutatis mutandis also in favor of employees, agents, vicarious agents, and other contractors of D-Link.
- 10.5. The above disclaimers and limitations regarding liability shall be governed by the laws applicable in the country of purchase of the DAS product.

11. Protection

- 11.1. The end-user shall undertake not to reproduce or make independent changes to the D-Link software without the express and written approval of D-Link. If a third party brings a claim against D-Link for infringement of proprietary rights due to the actions of the end-user, the end-user shall be obligated to save D-Link harmless from any third-party claims and to reimburse D-Link for all costs and expenses that it incurs as a result of a legal dispute with a third party.

- 11.2. D-Link shall undertake to keep confidential the end-user's data and information as well as information on the end-user's infrastructure that it learns in the process of performing under the DAS service agreement and not to share such information with any third party or publish such information in any other manner.
- 11.3. The contracting parties mutually agree to keep confidential any information that they obtain from the respective other party and not to use, or make accessible to a third party, any such information for the duration and after the expiry of the agreement without the written consent of the party concerned. Subsidiaries or affiliated companies of the respective contracting party shall not be deemed third parties in the context of this agreement.
- 11.4. The above provision shall not apply to information that, upon receipt, was already known, is published without violating confidentiality obligations or that is passed on in compliance with statutory provisions on disclosure. If information is passed on in the latter case, D-Link shall inform the end-user in writing immediately.

12. Collateral Agreements

Changes or additions to these Terms and Conditions of Service as well as collateral agreements and declarations of third parties shall be in writing.

13. Severability

Should any provision(s) of this agreement be or become ineffective or void, the validity of the remaining provisions shall in no way be affected. The parties shall replace such ineffective provision with a relative provision that comes as close as possible to the economic purpose of such ineffective provision and that they would have agreed if they had known of its ineffectiveness.

14. Jurisdiction

The place of jurisdiction shall be the country of purchase of the DAS service product.