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## Section 1 Scope of the contract

This contract between Q-DAS<sup>®</sup> and the distributor covers only the Q-DAS<sup>®</sup> software products/modules that are explicitly specified in the contract document. Program adaptations, training, manuals and other Q-DAS<sup>®</sup> products are outside the scope of this agreement.

## Section 2 Purpose of the contract

The Distributor purchases and sells the software products or modules covered by this agreement for his own account and under his own name. The Distributor does not have the right to act as a legal representative of Q-DAS<sup>®</sup>.


The Distributor has the right to integrate the software in software products of his own and to re-sell it as an integrated piece of software. Any such integration of Q-DAS<sup>®</sup> products must be clearly and indelibly marked in some appropriate manner. The design of the Q-DAS<sup>®</sup> products themselves must not be changed, and the Q-DAS<sup>®</sup> copyright must be fully respected.

## Section 3 Co-operation

1. Q-DAS<sup>®</sup> will provide the Distributor with appropriate quantities of advertising material (brochures, price lists etc.). This material remains the property of Q-DAS<sup>®</sup> and must be returned after termination of the contract, unless it has been used up in fulfilment of its intended purpose.
2. To support product demonstrations and software integration, Q-DAS<sup>®</sup> will provide the Distributor with a complete version of the software licensed for use by the distributor only. This version must not be re-sold. Passing it on to subcontractors requires prior permission from Q-DAS<sup>®</sup>. Following termination of the contract, this version must be returned to Q-DAS<sup>®</sup>.
3. Q-DAS<sup>®</sup> will supply standard versions for single-user licences to the Distributor for re-sale. In these versions, Q-DAS<sup>®</sup> will include a fixed entry of the respective end customer's name.
4. Q-DAS<sup>®</sup> undertakes to enter into maintenance contracts with any of the Distributor's end customers that demand such a contract, and to do so in accordance with the applicable Q-DAS<sup>®</sup> conditions and prices. The Distributor will strongly advise the end customer to enter into such a maintenance contract. Q-DAS<sup>®</sup> further undertakes to support the Distributor in the accommodation of individual end user wishes, performance of training etc., in accordance with the relevant price list or, alternatively, industry-standard fees.

## Section 4 Terms and conditions for dealings between Q-DAS<sup>®</sup> and the Distributor

1. In purchasing the Q-DAS<sup>®</sup> products that are within the scope of this contract, the Distributor will be granted the contractually agreed discount on the list prices valid at the time the order was placed. The current price list has been attached to this contract.
2. Charges by Q-DAS<sup>®</sup> are due in full as soon as an invoice has been issued. Payments are to be transferred to one of the Q-DAS<sup>®</sup> accounts, without subtraction of bank charges. If the contracting party defaults on the payment due, Q-DAS<sup>®</sup> is entitled to charge interest on any overdue amount at an interest rate of 8% above the relevant base rate.
3. A contracting party only has a lien on goods as defined in § 273 BGB inasmuch as such lien is based on this agreement. The setting off of counterclaims by the contracting party against claims by Q-DAS<sup>®</sup> is only permitted if such counterclaims are uncontested or have been upheld by a court of law.
4. All movable supplies (data carriers, documentation, etc.) remain the property of Q-DAS<sup>®</sup> until such time as all present and future claims by Q-DAS<sup>®</sup>, including accessory claims, arising from this contractual relationship are settled in full. This retention of title on the part of Q-DAS<sup>®</sup> expires as soon these claims have been settled in full.

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5. Changes in the price list are published on the Q-DAS<sup>®</sup> website [www.q-das.de](http://www.q-das.de). Q-DAS<sup>®</sup> may advise the contracting party of such changes by e-mail. A price change is deemed to have been agreed if there is no protest in written or textual form from the contracting party against the price change within four weeks of its notification on the Q-DAS<sup>®</sup> website. If Q-DAS<sup>®</sup> has advised the contracting party of the price change by e-mail, the time period for protests reduces to two weeks from receipt of the e-mail. If the contracting party protests within the set period, Q-DAS<sup>®</sup> is entitled to terminate the contract at the end of the current contractual period without having to observe a period of notice.
6. Sales deals which the Distributor has confirmed to the end customer prior to the publication of the new Q-DAS<sup>®</sup> price list and for which Q-DAS<sup>®</sup> has received an order confirmation from the Distributor within one week of the publication of the price change on the website will be subject to the old price list.
7. Q-DAS<sup>®</sup> supplies single- and multi-user licences. Provided that the contract between the Distributor and Q-DAS<sup>®</sup> does not contain specific provisions to the contrary, the Distributor only has the right to sell single-user licences.
8. Where, in an individual case, the contract with Q-DAS<sup>®</sup> or a separate agreement specifies that a Distributor is entitled to distribute multi-user licences (works or area licences etc.), these may only be supplied to end customers as multi-user licences with the specification that was purchased from Q-DAS<sup>®</sup>. Q-DAS<sup>®</sup> enters the end customer's name in the licence. Splitting a multi-user licence to serve several ultimate purchasers or sites is not permitted. The area of application of a multi-user licence must be specified exactly (organisational unit and location). Any deviation requires the agreement of Q-DAS<sup>®</sup>. The Distributor may only provide a multi-user licence to an end customer if he has previously advised Q-DAS<sup>®</sup> of the name/company name and address of the end customer and has demonstrated to Q-DAS<sup>®</sup> that the end customer has undertaken not to pass on or re-sell the multi-user licence to any third party without prior approval from Q-DAS<sup>®</sup>.

## **Section 5 Prices and terms for dealings between the Distributor and third parties**


1. The Distributor is free to set prices and terms for his dealings with third parties as he pleases.
2. However, the Distributor is obliged to ensure for each transaction, be it a single- or multi-user licence, that there is an effective agreement ensuring compliance with the current version of the "General terms and conditions of use for software products". Multi-user licences may only be passed on as such.

## **Section 6 Direct transactions by Q-DAS<sup>®</sup>**

This contract is not exclusive, and does not give the Distributor any exclusive regional distribution rights. Q-DAS<sup>®</sup> retains the unlimited right to distribute its software products itself or to distribute them via third parties. The Distributor is entitled to distribute software products that represent competitors of Q-DAS<sup>®</sup> products.

## **Section 7 Duration of the contract / notice to terminate**

1. The contract is concluded for an unspecified term. It can be terminated at the end of any calendar year, subject to three months' notice.
2. Both parties retain the right of termination for cause, even without notice. Termination for cause includes such causes as –

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- a. changes in the Distributor's ownership, management and/or shareholder relationships that have occurred without prior consultation of Q-DAS<sup>®</sup>,
  - b. failure to perform the Distributor's duties as defined in Sections 3 to 5;
  - c. re-selling the software version provided to the Distributor for demonstration purposes (cf. Section 3 Paragraph 2 ).
  - d. lack of success of the Distributor's activities; an irrebuttable presumption of a lack of success is made if the Distributor is unable to sell a single licence over a period of one year.
3. Any notice to terminate the contract must be given in writing. The requirement of written notice can also be fulfilled using text, fax or e-mail transmission or similar modes of communication.

## Section 8 Penalty for non-compliance


If the Distributor re-sells software falling within the scope of this contract without putting the end customer under the obligations defined in Section 5 Paragraph 2, or if he passes the software on without sufficient copy protection, or if he fails to comply in some other way with the obligations defined in Sections 3 and 4, the Distributor undertakes to pay Q-DAS<sup>®</sup> a penal sum equivalent to five times the list price of the Q-DAS<sup>®</sup> software concerned in the non-compliance, the minimum penalty being € 20,000.00.

## Section 9 Winding up

1. Giving notice and terminating the contract do not affect individual transactions between Q-DAS<sup>®</sup> and the Distributor that have taken place under this contract. Q-DAS<sup>®</sup> will continue to make deliveries to the Distributor in order to fulfil its delivery duties and to enable the Distributor to conclude business transactions with third parties in the customary manner until such time as the termination of the contract has come into effect.
2. The parties to the contract agree that neither of them is entitled to any damages, compensation or other claims in connection with the termination of the contract. This applies with the exception of compensation claims by a party which arise from the other party having culpably behaved in such a way as to justify termination for cause.

## Section 10 Liability – limitation of claims

1. Q-DAS<sup>®</sup> only assumes liability for consequential damages in cases of intent or gross negligence, unless the claims result from slight negligence that has led to violation of essential contractual duties. In all cases, liability is limited to the typical, foreseeable damage, and at most twice the licence fee excluding value-added tax. Liability for non-typical or unforeseeable damages is excluded.
2. Q-DAS<sup>®</sup> is only liable for inability if essential contractual obligations have been violated. Liability in this regard is limited to the typical, foreseeable damage, and at most twice the licence fee excluding value-added tax. Liability for non-typical or unforeseeable damages is excluded.
3. For claims arising from default or impossibility, Q-DAS<sup>®</sup> is liable on the merits or in terms of amount, without limitation, if its legal representatives or managers are guilty of intent or gross negligence. Beyond that, the merits-based liability of Q-DAS<sup>®</sup> for claims due to default and impossibility only extends to cases of culpable violation of essential contractual duties; and beyond essential contractual duties to liability on the merits for gross negligence on the part of single vicarious agents, unless Q-DAS<sup>®</sup> can exempt itself from liability based

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on standard commercial practice. In the cases defined in Section 10 Paragraph 3 Clause 2, Q-DAS® is only liable in terms of amount for compensation for typical, foreseeable damage; however, the compensation claim in such cases is limited to the amount that the insurer of Q-DAS® is obliged to pay for the claim in question; if an insurer is not obliged to pay, the claim is limited to € 25,000.00. Liability for non-typical or unforeseeable damages is excluded.


4. For claims arising from culpability-based liability, Q-DAS® is liable on the merits and up to the full amount of the damage, if there was intent or gross negligence on the part of Q-DAS®; this applies likewise to legal representatives or managers. Beyond that, the merits-based liability of Q-DAS® only extends to cases of culpable violation of essential contractual duties; and beyond essential contractual duties to liability on the merits for gross negligence on the part of single vicarious agents, unless Q-DAS® can exempt itself from liability based on standard commercial practice. In the cases defined in Section 10 Paragraph 4 Clause 2, Q-DAS® is only liable in terms of amount for compensation for typical, foreseeable damage; however, the compensation claim in such cases is limited to the amount that the insurer of Q-DAS® is obliged to pay for the claim in question; if an insurer is not obliged to pay, the claim is limited to € 25,000.00. Liability for non-typical or unforeseeable damages is excluded.
5. The above limitations of liability do not apply to personal injuries based on intent or gross negligence, to damage due to the lack of assured characteristics, to damages due to the violation of third-party copyright or to damages based on inalienable legal provisions of product liability law.
6. Q-DAS® is not liable for damages that could have been prevented by ensuring proper data security, provided that Q-DAS® has drawn attention to the need for data security and the required scope of such data security.
7. Q-DAS® does not assume any liability beyond that defined above.
8. Any claims by the contracting party based on this agreement, in particular those for subsequent fulfilment or compensation for damage, are subject to a period of limitation of twelve months after arising of the cause.

## Section 11 Miscellaneous

1. The laws to be applied are exclusively those of the Federal Republic of Germany.
2. Should a provision in these conditions be invalid or become invalid at some future date, the remainder of the contract and of the provisions remains effective; the contracting party and Q-DAS® agree to accept such an interpretation of any invalid provision as is closest to the business meaning and purpose of the provision while at the same time being valid.
3. This contract includes all the agreements that the contracting parties have made; any supplemental agreements or modifications to this contract, its termination or giving notice to terminate must be made in writing in order to be valid (cf. Section 7 Paragraph 3).
4. The contracting party can assign claims based on this contract only after prior agreement from Q-DAS®.
5. Order confirmations or terms and conditions of the contracting parties containing other provisions than these present terms and conditions are not recognised by Q-DAS®. The contracting party accepts the validity of the Q-DAS® terms and conditions by virtue of taking receipt of the first goods or services supplied under this contract, if not before. Beyond that, the current, up-to-date "General terms and conditions of use for software products" of Q-DAS® apply, and complement this contract.

## Section 12 Place of fulfilment – court of jurisdiction

1. If there are disagreements between the parties, the contracting parties will at first make an attempt to settle these amicably.

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2. The place of fulfilment and court of jurisdiction for all rights and claims arising from this contract is Weinheim/Bergstrasse (Germany). This agreement concerning the court of jurisdiction and the place of fulfilment is only valid with respect to general merchants, legal entities under public law or public funds as well as contracting parties who after entering into this agreement move their place of residence or usual place of abode away from the Federal Republic of Germany or whose place of residence or usual place of abode is unknown at the time the suit is brought.