

### 1. Contractual Basis

#### 1.1 Preamble

Quality First Software GmbH (QFS) is a company developing and distributing software designed to help in testing and thus enhancing other software.

This Agreement governs the support and maintenance for the products licensed by the customer. QFS hereby explicitly object to any counter-confirmations referring to the General Terms and Conditions of Business of contractual partners. The foregoing shall also be applicable if submittal or acceptance of offers by contractual partners is made subject to the prior applicability of their own General Terms and Conditions of Business.

#### 1.2 Assignment of Rights and Obligations

QFS may transfer any of the rights and obligations under this Agreement to third parties at any time and is entitled to use agents for fulfillment of QFS' contractual obligations.

### 2. Content of Services

#### 2.1 Support and Maintenance Services

QFS shall provide the following support and maintenance services for the products licensed by the customer:

- Provision of known error corrections by delivery of available patches via electronic communication and for download via the Internet ([www.qfs.de](http://www.qfs.de)).
- Provision of available minor updates (bundling of several error corrections in one version) for download via the Internet ([www.qfs.de](http://www.qfs.de)).
- Provision of available medium upgrades (version with additional / enhanced functions) for download via the Internet ([www.qfs.de](http://www.qfs.de)).
- Provision of available major upgrades (version with substantially enhanced volume of functions).
- Information via electronic communication (email) when new minor/medium/major updates/upgrades are available.

The support and maintenance services listed in this clause 2.1 only comprise the products licensed by the customer, but not any new products of the same product family.

The granting of rights of use and the delivery of the relevant license files for all minor/medium/major updates/upgrades shall be limited to the number and type of products, as well as the terms of use thereof, for which this Agreement has been concluded.

#### 2.2 Telephone Support

For the term of this Agreement, QFS shall provide telephone support in the following manner: Queries for specific technical problems and failures are possible at any time. For this purpose, the customer will generally leave a message indicating the exact problem description and a classification in the following priority and error levels:

- Level A: System does not work.
- Level B: System works with limited functions.
- Level C: System basically working. Just errors/problems with specific functions.

QFS will show best efforts to provide a qualified response (via phone or e-mail) within the following time frames:

- Level A: Response within the next working day (Monday - Friday, 9 a.m. until 5 p.m. local time).
- Level B: Response within the next working day (Monday - Friday, 9 a.m. until 5 p.m. local time).
- Level C: Response within the working day after next (Monday - Friday, 9 a.m. until 5 p.m. local time).

Exclusively applicable is the local time at the seat of QFS. Exclusively applicable regarding holidays are the legal holidays at the seat of QFS.

#### 2.3 Email Support

For the term of this Agreement, QFS shall provide support via email. The error and priority levels set forth in clause 2.2 above and the response times indicated therein are applicable.

#### 2.4 Subject Matter of Support Services

The subject matter of support services in clauses 2.2 and 2.3 above is the help with installation or operation problems and alleged program errors. Installation services or other support services at the customer's location are not a subject matter of this Maintenance Agreement.

#### 2.5 Service Contract

Due to the complex nature of hardware and software applications, networks and specific configurations with the customer, QFS cannot assume liability for the successful remedy of any error, i.e. despite QFS' best efforts it may occur that errors cannot be rectified in providing the support to the customer. Consequently, all services are provided as a service contract to this effect.

### 3. Securing of Services

#### 3.1 Customer Cooperation

To guarantee the best level of efficiency, the customer commits to describing the problems as exactly and detailed as possible. Especially all the questions referring to the failure should be answered as accurately as possible. Only the compliance with this obligation to cooperate as an essential contractual performance will enable the provision of all support services in a timely and due manner.

#### 3.2 Limitation / Exclusion of Liability

3.2.1 QFS is liable without contractual restrictions in accordance with statutory regulations:

- for damages based on a breach of a guarantee provided by QFS;
  - for willful misconduct;
  - for damages based on the fact that QFS has fraudulently concealed a defect;
  - for damages arising from injury to life, body or health caused by an intentional or negligent breach of duty by QFS or otherwise on the intentional or negligent conduct by a legal representative or a vicarious agent of QFS;
  - for damages other than those listed under indent 4 based on intentional or grossly negligent breach of duty by QFS or otherwise on the intentional or grossly negligent conduct by a legal representative or a vicarious agent of QFS.
- pursuant to the terms of the German Product Liability Act.

3.2.2 In cases other than those listed in 3.2.1, QFS' liability for negligent breaches of Cardinal Duties by QFS or by a legal representative or agent of QFS shall be limited to such damage which was typical for this kind of business and foreseeable upon the execution of this Agreement. Cardinal Duties shall mean duties which enable the performance of the Agreement i.e. are precondition of the performance of the Agreement and which the customer may therefore rely on. Typical and foreseeable is a damage which QFS has foreseen as a potential consequence of a breach of duties or - taking into consideration the circumstances QFS was or should have been aware of - QFS should have foreseen.

3.2.3 In cases other than those listed in 3.2.1 and 3.2.2 the liability of QFS for negligence is excluded.

3.2.4 The plea of contributory negligence (sec. 254 German Civil Code/BGB) remains unaffected. The customer is especially obliged to make backup copies and to provide sufficient and up to date anti-virus protection. Backup copies have to be made regularly and to an extent that is appropriate when considering the usage and the risks, typically once a day in order to ensure restoration of data with reasonable time and effort. In case of loss of data, QFS' liability is limited to the restoration expenses that would have arisen if backup copies had been made regularly and where anti-virus protection had been in place.

3.2.5 The foregoing provisions regarding the limitation of liability apply to all contractual and non-contractual claims for damages against QFS regardless of their legal grounds and accordingly to the liability of QFS to compensate futile expenses.

### 3.3 Copyright

QFS shall be entitled to the copyright as well as any proprietary, utilization and commercial exploitation rights resulting thereof to any and all materials capable of being protected by copyright that are made available to the customer under this Agreement. Any granting of rights shall be made exclusively in the form agreed upon in the license agreement. Any violations of copyright shall be brought before the court by QFS both under civil and criminal law.

## 4. Performance of the Agreement

### 4.1 Commencement and End

This Agreement is concluded with the acceptance of the Software Maintenance Agreement by the customer. The base term is one year and commences on the date on which the Agreement is invoiced by QFS.

### 4.2 Termination with Notice

Termination by the end of the base term is possible by giving three months' notice in writing to take effect by the end of the respective month. In the absence of termination in due time, the Agreement shall be renewed for further one year's periods each time.

Termination upon the expiration of the base term is possible at any time by giving three months' notice in writing to take effect by the end of the respective month.

### 4.3 Termination for Good Cause

The parties' right to terminate this agreement for good cause remains unaffected. A good cause for QFS is present, especially - but not limited to - if

- the customer has committed a severe breach of the contractual covenants
- and the consequences of such breach, especially pecuniary damages, have not been remedied without undue delay and without

the need for an explicit request in this respect;  
- or the consequences of the breaches of the Agreement cannot be remedied due to their nature  
- and termination for good cause has been notified no later than within three months of the date on which the party suffering the breach got reliable knowledge thereof.

## 5. General Provisions

### 5.1 Choice of Law and Venue

This Agreement is exclusively governed by German law. Should German law make reference to foreign jurisdictions, this reference is excluded. The application of the UN Sales Convention is explicitly excluded.

In case the parties are merchants, legal entities under German public law or special assets under German public law, the exclusive venue shall be QFS' seat of business. The same applies in case one party does not have a legal domicile in Germany. It is at QFS' discretion to bring charges forward also at the other party's seat of business in cases stated in this paragraph.

### 5.2 Written Form

Any modifications of and/or amendments to this Agreement, as well as all other statements of legal import of both parties, shall only take effect if made in writing or simple text without signature (e.g. email, or facsimile). The same applies to modification of this clause; abandoning the formal requirement requires an agreement in writing or simple text without signature.

### 5.3 Interpretation of the Agreement

If any of the provisions of this Agreement should be or become invalid, ineffective or unenforceable, that will not affect the effectiveness of the remaining provisions. The same applies to any gaps in individual provisions and/or parts of this Agreement.