

1. Scope

1.1 The parties to the Agreement are Quality First Software GmbH (hereinafter also referred to as "QFS") and the Licensee.

QFS is a company developing and distributing software designed to help in testing and thus enhancing other software. Subject of the Agreement is the software QF-Test (hereinafter also referred to as "the Software" or "QF-Test"). QF-Test is a tool for an automated test of programs with a graphical user interface. A more detailed description is provided in Sections 1 and 2 of the document "QF-Test Product Description and Licensing Models", which QFS will provide to the Licensee upon request. The aforementioned document also lists the system requirements and the supported versions of operating systems and software required for running QF-Test.

The Agreement governs the regulations for making QF-Test available for the term agreed between the parties in exchange for a subscription fee as well as, subject to Section 5, temporarily making available a test version of QF-Test free of charge pursuant to Section 598 subseq. of the German Civil Code ("Leihe").

QFS expressly objects to any counter-confirmations or general terms and conditions of the Licensee. The foregoing shall also apply if the Licensee submits or accepts offers by stating that its own general terms and conditions shall be incorporated into the Agreement and prevail over QFS' terms.

1.2 By the Agreement, the parties agree on exchanging services. However, such exchange shall not create any corporate relationship between QFS and the Licensee.

1.3 QFS may transfer any of the rights under the Agreement to third parties at any time. The Licensee may not assign or sublicense the rights granted under Section 2 below without prior written approval by QFS unless otherwise agreed upon.

2. QFS' Services

2.1 Granting of License

QF-Test is software protected by copyright. QFS is entitled to grant to third parties rights of use and commercial exploitation to QF-Test. The licensing models offered by QFS are described in Section 3 of the document "QF-Test Product Description and Licensing Models", which QFS will provide to Licensee upon request. The precise extent of the rights granted to Licensee follows from the respective quotation.

Unless agreed otherwise by both parties, on the basis of the Agreement, the Licensee shall be granted a non-exclusive right of use limited in time. Such right of use shall be limited to the actually purchased version, which means new versions must have a new license. Moreover, the right of use shall be limited to the scope of the licenses specified in the respective purchase order and the locations and/or networks mentioned therein. Simultaneous use of QF-Test shall be limited to the number of licenses specified in the purchase order. The use of QF-Test shall be limited to internal purposes of the Licensee. It must not be passed on to any third parties. The standard terms for the sale of software by QFS transmitted together with the Software shall not apply to the subscription of the Software.

2.2 Delivery / Installation

QFS shall deliver QF-Test exclusively in executable form (object code). QFS shall not be obliged to deliver any source code. QF-Test shall be exclusively distributed on the Internet as downloads. The Licensee shall have full responsibility for the installation and the functioning of the Software on the computers and networks operated by the Licensee. QFS is under no obligation to provide any installation services.

2.3 Manuals / Documentation

Any manuals and the entire documentation for QF-Test shall be made available as HTML and/or PDF files in German and English. The Licensee has no entitlement whatsoever to be provided the mentioned documentation as hardcopy; the Licensee may print out the manuals and documentation if required, notwithstanding the foregoing.

2.4 New program versions (e.g. updates)

QFS is free to make available minor updates (bundling of several error corrections in one version) for QF-Test free of cost at its discretion. The provisions under Sections 2.1 to 2.3 shall apply mutatis mutandis. The Licensee is not entitled to the provision of minor updates. The rights of the Licensee due to defects of the Software shall remain unaffected.

New versions of QF-Test shall be made available by QFS at its discretion in the form of medium upgrades (version with additional / enhanced functions) or major upgrades (version with substantially enhanced volume of functions).

2.5 Intended Use (Operation in a Testing Environment); increased Care and Diligence in a Productive Environment

QF-Test is developed and intended to be used in a testing environment. If the Licensee uses QF-Test in a productive environment, this is at the Licensee's own risk and within its own responsibility. QFS explicitly points out, that great damage may be caused by use of QF-Test in a productive environment – most notably in case of inappropriate use. If the Licensee uses QF-Test in a productive environment, he has to ensure that QF-Test is used only by properly trained personnel and with all care and diligence. In particular Licensee has to ensure by continuous monitoring and verification of the operation of the Software that a malfunction of QF-Test or the tests created for this purpose is noticed in a timely manner so that appropriate action (e.g. aborting the tests) can be taken.

2.6 No Entitlement to Support and Maintenance under the Terms of the Agreement

Support and Maintenance services are not subject to the Agreement and have to be agreed between Licensee and QFS separately. QFS offers a standard Software Maintenance Agreement for such purpose.

3. Warranty, Liability, Copyright

3.1 Warranty

3.1.1 The Licensee is entitled to rights due to a defect of QF-Test according to the legal provisions under Section 535 subseq. of the German Civil Code ("Mietrecht"), unless otherwise agreed.

3.1.3 In the event of a material defect of QF-Test, QFS is initially obliged and entitled to repair (i.e. remedy the defect) or replace (i.e. provide a new defect-free program version) at its discretion, which QFS will determine within a reasonable period of time. The remedy of the defect may also consist in QFS showing the Licensee contractual and reasonable possibilities to avoid the effects of the defect, insofar as the defect itself can only be remedied with disproportionate effort and the intended use of QF-Test is thereby only insignificantly impaired.

3.1.4 In the event of a defect of title by QF-Test, QFS shall be entitled and obliged, at its discretion, which QFS will determine within a reasonable period of time, to first remedy the defect by providing a legally non-contestable possibility of use of the Software or of a replaced or modified equivalent software. The Licensee shall adopt the new program version if the contractual scope of functions is maintained and the adoption is reasonable.

3.1.5 If the restoration of the condition suitable for use in accordance with the contract has finally failed or if a reasonable period to be set by Licensee for this purpose has expired unsuccessfully twice due to the same defect or if the setting of such a period is dispensable under the statutory provisions, Licensee may exercise its further rights in accordance with the statutory provisions, in particular reduce the fee reasonably or terminate the contract extraordinarily.

3.1.6 QFS's liability for damages and futile expenses is limited in accordance with Section 3.2.

3.1.7 If, upon notification of a material defect by the Licensee, QFS provides services to search for or remedy the defect without being obliged to do so, the Licensee shall be obliged to compensate QFS

for any damages or expenses incurred as a result of the services to search for or remedy the defect, unless the Licensee has not breached any obligations or is not responsible for his breach of duty in reporting the defect.

3.1.8 Licensee's Obligations:

a) It is the Licensee's obligation to inform himself about the essential functional features of QF-Test and their technical requirements. He bears the risk of whether QF-Test meets his wishes and requirements. In the event of doubt, he may seek advice from QFS employees or expert third parties before concluding the agreement.

b) It is the Licensee's obligation to create and maintain the necessary system requirements for the use of QF-Test in his area of responsibility at his own expense, in particular to provide the necessary hardware, third-party software and Internet connection.

c) It is the Licensee's obligation to take reasonable precautions in the event that QF-Test does not function properly in whole or in part (e.g. by data backup, fault diagnosis, regular checking of the results). In the absence of an express written notice in individual cases, all persons employed by QFS and providing services on behalf of QFS to the Licensee may assume that the Licensee has made backups of all data with which they may come into contact.

d) It is the Licensee's obligation to back up his data in accordance with the state of the art, at intervals appropriate to the application, so that he can restore the data with reasonable effort, and to take appropriate technical and organizational measures to protect against malware.

e) It is the Licensee's obligation to use QF-Test in accordance with the applicable current manuals or documentation.

f) It is the Licensee's obligation to download and install new program versions such as minor updates from QF-Test for the purpose of remedying any defects after information by QFS unless this is neither possible nor reasonable for the Licensee.

g) It is the Licensee's obligation not to make or have made changes and/or repair attempts to QF-Test without the prior written consent of QFS unless the Licensee is entitled by law to make changes to QF-Test.

h) It is the Licensee's obligation to state in his notice of defect a description of the defect in question which is as detailed as possible and, in particular, to state the work steps which led to the occurrence of the defect, its effects and the appearance of the defect.

i) It is the Licensee's obligation to support QFS in identifying and remedying defects, to provide or print out help information at QFS's request, and to support error analysis and remedial work by providing any further information, as well as to provide immediate access to the documents from which the detailed circumstances of the occurrence of the defect arise.

3.2 Limitation / Exclusion of Liability

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

a) in cases of willful misconduct;

b) for damages insofar as these are based on the fact that QFS has fraudulently concealed a defect;

c) 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;

d) for damages other than those listed under letter c) 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;

e) pursuant to the terms of the German Product Liability Act, the EU General Data Protection Regulation and the German Data Protection 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 the 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 Licensee 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 Section 3.2.1 and 3.2.2 the liability of QFS for negligence shall be excluded.

3.2.4 Any strict liability of QFS pursuant to Section 536a para. 1 var. 1 of the German Civil Code for defects which already exist at the time of conclusion of the Agreement shall be excluded.

3.2.5 The plea of contributory negligence (Section 254 of the German Civil Code) shall remain unaffected.

3.2.6 The foregoing provisions regarding the limitation of liability shall 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, use and commercial exploitation rights resulting thereof to any and all materials capable of being protected by copyright that are made available to the Licensee in connection with the granting of license. Any granting of rights shall be made exclusively in the form as described in Section 2.1 above.

4. Performance of the Agreement

4.1 After conclusion of the Agreement the Licensee receives a license file limited to three months; the right to use QF-Test expires three months after conclusion of the contract if the Licensee has not paid the full subscription fee within this period.

As soon as full payment has been made, the Licensee receives a license file limited to the duration of the Agreement and is entitled to use QF-Test for the duration of the contract.

Further claims and rights of QFS in case of default of payment by the Licensee shall be neither limited nor excluded.

4.2 The term of the Agreement is subject to the agreement between the parties. Have the parties agreed upon a limited term, the Agreement automatically starts and ends with the date agreed. In this case the right to terminate the Agreement with notice is excluded. License fees shall become due for the full term in advance on the date on which they are invoiced by QFS.

Otherwise, the following shall apply: The base term is one year and commences on the date on which the Agreement is invoiced by QFS. 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. License fees shall become due for one year in advance on the date on which they are invoiced by QFS.

The right to immediate termination for cause shall remain unaffected. In case QFS severely and materially breaches the Agreement, Licensee is only entitled to immediate termination of the Agreement after a reasonable period for cure has lapsed without QFS having cured the severe material breach, unless the setting of such a period is dispensable by law.

Any notice of termination must be in writing in order to be effective.

5. Special Provisions for Test Versions

5.1 QFS may provide a test version of QF-Test to non-registered Licensees free of charge and pursuant to Section 598 et seq. of the German Civil Code (“Leihe”).

5.2 The scope of the license corresponds to that for the full version according to Section 2.1, however the right to use the test version shall be limited to four weeks subject to other agreements. Further restrictions shall remain at QFS’ sole discretion.

5.3 Unless otherwise agreed, delivery shall be made in accordance with Section 2.2. However, Section 4 shall not apply.

5.4 Contrary to Section 2.3, QFS shall not be obliged to deliver manuals or documentation for the trial version.

5.5 If QFS fraudulently conceals a defect in the law or an error in the test version of QF-Test, QFS shall be obliged to compensate the Licensee for the damage resulting thereof. In all other respects, the Licensee is not entitled to any rights due to defects subject to Section 5.5 sentence 1 and Section 5.6.; Section 3.1 shall not apply. To the extent that QFS nevertheless provides services to remedy defects beyond this, this shall be done voluntarily without acknowledgement of a legal obligation; this shall not constitute a claim to services.

5.6 QFS shall be only liable for intent and gross negligence. The objection of contributory negligence shall remain unaffected. Section 3.2 shall not apply.

5.7 The License Agreement for the test version ends – without requiring any further declaration by any party – upon expiry of the time limit for the test version.

6. General Provisions

6.1 Choice of Law and Venue

6.1.1 The Agreement shall be exclusively governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and to the exclusion of the rules of private international law.

6.1.2 The exclusive place of jurisdiction for all disputes arising out of or in connection with the Agreement between QFS and a Licensee who is a merchant, a legal entity under public law or a special fund under public law shall, at QFS’s discretion, be the respective registered office of QFS or the respective registered office of the Licensee. Notwithstanding the first sentence, the exclusive place of jurisdiction for disputes within the meaning of the first sentence shall be the respective registered office of QFS in the event of actions brought by the Licensee within the meaning of the first sentence against QFS. If the Licensee is neither a merchant nor a legal entity under public law nor a special fund under public law and if he also has no general place of jurisdiction in Germany, the exclusive place of jurisdiction for disputes within the meaning of sentence 1 shall also be the respective registered office of QFS. Mandatory statutory provisions on exclusive places of jurisdiction including Section 689 para. 2 of the German Code of Civil Procedure shall remain unaffected by sentences 1 to 3.

6.2 Written Form and Text Form

Any modifications of and/or amendments to the Agreement 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 Section; abandoning the formal requirement requires an agreement in writing or simple text without signature. Deviating individual agreements shall prevail. Legally relevant declarations and notifications which the Licensee makes to QFS after conclusion of the Agreement in relation to the Agreement must also be made in writing or in text form in order to be effective.

6.3 Interpretation of the Agreement

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