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## Section 1 Subject of the Contract

The subject of the Contract is the Q-DAS<sup>®</sup> statistics server specified in more detail below and also its options. The Contract also specifies under which operating systems the Q-DAS<sup>®</sup> statistics server can be used.

The Q-DAS<sup>®</sup> statistics server is a program to be understood like a black box. This is supplied to the Contract partner in compiled form. The Q-DAS<sup>®</sup> statistics server can be addressed by a client application via an interface defined by Q-DAS<sup>®</sup> (COM/DCOM). To do this, the application transmits the data and the commands required to the Q-DAS<sup>®</sup> statistics server in the Q-DAS<sup>®</sup> ASCII transfer format. The Q-DAS<sup>®</sup> statistics server processes the request and provides the results via the interface.

The Contract is concluded between Q-DAS<sup>®</sup> and a Contract partner, who wants to integrate the Q-DAS<sup>®</sup> statistics server into his own software (to be called application) and resell the Q-DAS<sup>®</sup> statistics server together with his software to an end customer. The end user uses clients to communicate with the Q-DAS<sup>®</sup> statistics server through the application or through a portal. A client can also be part of the application itself (see figure 1).

The client, respectively the application, will be supplied to the end user as an executable program by the Contract partner. This is the so-called client connection. This client, respectively the application, is not allowed to be a Web Application or to communicate with one.

For web-based access, the end user uses a browser to access a portal, which communicates with the Q-DAS<sup>®</sup> statistics server through the application. This is the so-called portal connection.


It is clearly distinguished between a client connection and a portal (server) connection for communications between the Q-DAS<sup>®</sup> statistics server and the application. The application informs the Q-DAS<sup>®</sup> statistics server for each communication whether it is a client or a server connection.

In case of the client connection, the application logs a distinctly identified end user on to the Q-DAS<sup>®</sup> statistics server for a minimum period specified by Q-DAS<sup>®</sup>. If the same end user is logged on a second time within the time period, the specified time will be extended accordingly. Depending on the licensing, multiple end users are allowed to log on to the Q-DAS<sup>®</sup> statistics server at the same time. The conditions above apply to every single login.

In case of a portal connection, multiple end users are able to communicate (web-based) with the Q-DAS<sup>®</sup> statistics server through the application virtually simultaneously. In this case, the end users are unknown to the Q-DAS<sup>®</sup> statistics server. A portal connection could also be an automated system, which communicates with the Q-DAS<sup>®</sup> statistics server and processes or distributes the results within its own application.

For performance reasons only a limited number of clients or portal connections to the Q-DAS<sup>®</sup> statistics server can be established at the same time. For this reason, the Contract partner has the possibility to purchase and install several Q-DAS<sup>®</sup> statistics servers. In such a case, the application of the contract partner will decide which clients or portal connections will actually be connected to which Q-DAS<sup>®</sup> statistics server (Load Balancing). The conditions detailed above regarding clear distinction of the connections apply in this case correspondingly.

Section 2 details the application possibilities and Section 4 the licensing corresponding to the intended application.

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Other Q-DAS® products or services like program adaptations, updates, trainings, books, etc. are not the subject of this Contract.

## Section 2 Purpose of the Contract

The Contract partner provides Q-DAS® with information about the range of his products intended for use with the Q-DAS® statistics server before conclusion of the contract. This information is basis for the application possibility and the corresponding licensing (Section 4). The contract partner must inform Q-DAS® immediately if the range of products changes during the life of the Contract.

The Contract partner buys and sells the Q-DAS® statistics server in his own name and for his own account. The integrated Q-DAS® statistics server is sold exclusively in combination with his own software/application (Section 1). The Q-DAS® statistics server must not be resold independently. The Contract partner must guarantee that the Q-DAS® statistics server is made available only within his application and is inaccessible to third parties.

The Contract partner is entitled to integrate the Q-DAS® statistics server – without modification – into his own software and resell it as an integrated software package. The Contract partner must refer to the Q-DAS® statistics server as Q-DAS® software. The Q-DAS® statistics server is used by the end customer of the Contract partner as an integral part of the Contract partner's software. The license and the license fee payable (Section 4) are based on the number of clients or portal connections (Section 1) used by the end customer.

### Q-DAS® differentiates between the following application possibilities (figure 1):

#### Model 1: Stand-alone licensing


Stand-alone licensing (Section 4): The Contract partner must inform Q-DAS® of the number of applications with the integrated Q-DAS® statistics server as well as the used modules before delivery to his end customer. After that, Q-DAS® will license the Q-DAS® statistics server to be installed for the end customer.

#### Model 2: Concurrent licensing resp. portal licensing

Concurrent licensing (Section 4): The Contract partner must inform Q-DAS® of the used modules as well as the location and maximum number of client resp. portal connections going to communicate simultaneously with the Q-DAS® statistics server(s) before delivery to the final customer. After that, Q-DAS® will license the Q-DAS® statistics server for the actual end customer.

The Q-DAS® statistics server will be licensed only after the Contract partner has met all the above requirements. Based on the information supplied, Q-DAS® will issue the invoice to the Contract partner and will make Q-DAS® statistics server(s) available.

The Contract partner is not entitled to represent Q-DAS® in legal transactions.

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### Section 3 Cooperation

On request, Q-DAS® will provide the Contract partner with promotion material in adequate quantity. This material remains the property of Q-DAS®.

After conclusion of the Contract, Q-DAS® provides the Contract partner with a version of the Q-DAS® statistics server licensed merely to him for demonstration purposes and for integration of his software. This version may not be sold on and must be returned to Q-DAS® after expiration of the Contract. It can be made available to sub-contractors for demonstration purposes only as an integrated component of the software of the Contract partner as described above and subject to the prior written consent by Q-DAS®.

Q-DAS® pledges to support the Contract partner with the implementation of individual customer requirements against payment of the fee specified in the actual price list. The customer's requirements must be specified in writing for this purpose. Q-DAS® will prepare a quote with confirmation of the target date. After receipt of the order, the customer's requirements will be implemented according to the specifications.

### Section 4 Licensing

Q-DAS® differentiates between two licensing models (figure 1), subject to the application possibilities detailed in Section 2:


#### Model 1: Stand-alone licensing

With the Stand-alone licensing, the Q-DAS® statistics server is firmly connected with the application of the Contract partner, i.e. the application (possibly including one client) as well as the Q-DAS® statistics server are installed on the same computer system. Every single application sold to an end customer will be licensed individually to the Contract partner. The price to be paid results from the contractual agreement and the Q-DAS® price list valid at the time of delivery to the Contract partner. It is permitted to use the Q-DAS® statistics server only in connection with one single application. It is not permitted that this application is a web application or communicates with any web application.

#### Model 2: Concurrent licensing and portal licensing

With the Concurrent licensing, the Q-DAS® statistics server is licensed specifically to one end customer. It is permitted to install every purchased license of the Q-DAS® statistics server once only at one specific end customer. Access will take place using one of the methods described in Section 1. In this case, the license fee for one (1) purchased Q-DAS® statistics server will have to be paid for every installation at the end customer. The Contract partner is allowed to carry out the installation at the end customer only after the correct licensing by Q-DAS®. The license fee results from the contractual agreement and the Q-DAS® price list valid at the time of delivery.

Independent from the selected license model, the Contract partner has to sign a maintenance contract with Q-DAS® based on the „Software Maintenance and Service Conditions for Telephone Support“ for the Q-DAS® statistics server he purchased for demonstration purposes and to integrate the software. This maintenance contract guarantees the continuous upgrading and compatibility of the Q-DAS® statistics server. The Contract partner can conclude a maintenance contract with his end customer based on the same conditions. With this, the end customer has the right to the currently valid version of the Q-DAS® statistics server. As an alternative, the end customer can also conclude a maintenance contract for Q-DAS® statistics server directly with Q-DAS®.

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## **Section 5 Prices and Conditions of Payment – Relationship with Third Parties (End Customers)**


1. The Contract partner is free to determine pricing and conditions towards third parties and end customers.
2. However, the Contract partner is obliged to point out the Q-DAS® „General Conditions of Use for Software Products“ in their currently valid version for every transaction with end customers. The Contract partner is obliged to submit the name/company name and address of the end customer to Q-DAS® for controlling the observation of the conditions before the software is delivered.
3. Claims of Q-DAS® are payable immediately on invoice without deduction. Payments must be made to one of the Q-DAS® accounts free of charge. If the Contract partner is in arrears with his payment obligations, Q-DAS® is entitled to charge interest at the rate 9 percentage points above the relevant base interest rate for the portion of his receivables in arrears.
4. The Contract partner has no right of offset or retention according to paragraph 273 BGB unless the Contract partner's claims are accepted or legally established.
5. Q-DAS® reserves title to all delivered items, so far as they are movables (data carriers, documentation etc.), until payment in full for all present and future claims of Q-DAS® including all secondary claims arising from this Contract, has been made. The reservation of title of Q-DAS® lapses when these claims are settled in full.

## **Section 6 Direct Transactions by Q-DAS®**

The Contract is not conclusive and does not substantiate any claim of the Contract partner to a contractual territory. Q-DAS® is entitled, without limitation, to sell its software products itself or through third parties. The Contract partner is allowed to sell software products competing with Q-DAS® products.

## **Section 7 Life of the Contract / Termination**

1. The Contract is signed for an indefinite period. It can be terminated at the end of each calendar year subject to three months' notice.
2. The right of each party to extraordinary termination, including without notice, for significant reasons, is not affected. Significant reasons would be in particular, but not exclusively:
  - a. a change in the ownership and/or management and corporate conditions of the Contract partner which were not agreed with Q-DAS® beforehand;
  - b. an infringement by the Contract partner of the obligations covered by Sections 2, 4 and 5;
  - c. the resale of the statistics server supplied to the Contract partner for test and demonstration purposes;
  - d. if the Q-DAS® statistics server is used in a way that allows no explicit identification in the communication between end user and Q-DAS® statistics server or where this identification is avoided by false statements;

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- e. if the connection type (client or portal connection) is communicated inaccurately to the Q-DAS® statistics server.
3. Termination must be served in writing; text transmission, fax, email or similar forms of communication satisfy the written form requirement.

## Section 8 Contractual Penalty

If the Contract partner resells the Q-DAS® statistics server supplied to him for test purposes or infringes the obligations governed by Section 4, Section 5 or Section 12, or if he uses the Q-DAS® statistics server for his own purposes, not covered by the Contract with Q-DAS® or passes on the Q-DAS® statistics server in any other way contrary to the Contract, the Contract partner hereby undertakes to pay Q-DAS® a contractual penalty of ten times the price of the Q-DAS® software affected by the infringement. The Q-DAS® price list valid at the time of the infringement is authoritative for the price. The Contractor reserves the right to prove that the damage incurred exceeds this amount.

## Section 9 Warranty Claims

Q-DAS® guarantees that the Q-DAS® statistics server is able to function with the agreed operating systems. Q-DAS® will make every effort, within a reasonable development time, also to provide the server on future or new operating systems (Windows based). Q-DAS® will inform the Contract partner when this version is available.


The software warranty period is one year. Defects and faults discovered during this period will be remedied by Q-DAS®. The Contract partner is directly responsible for claims of third parties or end customers arising from the Contract with the Contract partner. The period of limitation for claims of the Contract partner vis-à-vis Q-DAS® on account of defects starts when the Q-DAS® statistics server is handed over to the Contract partner.

Q-DAS® does not guarantee that the function of Q-DAS® statistics server is guaranteed without interruption. Nor does Q-DAS® guarantee that the Q-DAS® statistics server is compatible with future Q-DAS® products, products of the Contract partner or end customer or with operating systems not specified, or on any hardware platforms.

The guarantee arrangements listed above are exclusive. No other agreements have been made.

## Section 10 Liability - Limitation

1. In the event of any consequential damages, for whatever legal reason, Q-DAS® is only liable in the event of wilful intent or gross negligence, unless the claims result from a slightly negligent infringement of essential contractual obligations. In these cases, the liability is limited to the typical, foreseeable damage and to twice the license fee without VAT at the most. Liability for atypical or unforeseeable damage is excluded.
2. Q-DAS® is liable for incapacity only if essential contractual obligations are infringed. The liability in this respect is limited to typical, foreseeable damage and to twice the license fee, without VAT, at the most. Liability for atypical or unforeseeable damage is excluded.
3. For claims arising from delay and impossibility, Q-DAS® is liable without limitation in terms of reason and amount if its legal representatives or managers are guilty of wilful

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intent or gross negligence. Also, in terms of reason, Q-DAS® is only liable for claims arising from delay and impossibility in the event of culpable infringement of essential contractual gross negligence of simple agents, unless Q-DAS® can exempt itself from this by virtue of commercial usage. In the cases of Section 10, para. 3, sentence 2, Q-DAS® is only liable in terms of amount for compensation of the typical foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS® has to pay for this claim; if the insurer has no subrogation obligation, the claim is limited to € 25.000,-. Liability for atypical or unforeseeable damage is excluded.

4. For any claims arising from culpability-based liability, Q-DAS® is liable in terms of reason and full amount in the event of its own wilful intent and own gross negligence; the same applies to legal representatives and management employees. Also, in terms of reason, Q-DAS® is only liable for culpable infringement of essential contractual obligations, outside essential contractual obligations, it is also liable in terms of reason for gross negligence of simple agents, unless Q-DAS® can exempt itself from this by virtue of commercial usage. In the cases of Section 10, para. 4, sentence 2, Q-DAS® is only liable in terms of amount for compensation of typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS® has to pay for this claim; if the insurer has no subrogation obligation, the claim is limited to € 25.000,-. Liability for atypical or unforeseeable damage is excluded.
5. The above liability limitations do not apply to personal injury based on wilful intent, gross negligence, and damage based on the absence of guaranteed properties or damage arising from the infringement of the copyrights of third parties or for claims arising from mandatory legal regulations of product liability law.
6. Q-DAS® is not liable for damage that could have been avoided by correct data back-up. In this respect, the general conditions for "Data Security" apply in their currently valid version, accessible on [www.q-das.de](http://www.q-das.de).
7. Q-DAS® is not liable beyond the scope described above.
8. Any claims of the Contract partner arising from this agreement, in particular for non-performance or compensation, lapse twelve months after their occurrence.

## Section 11 Rights of Third Parties


Q-DAS® confirms that the Q-DAS® statistics server is free from rights of third parties. Q-DAS® owns all the copyrights, patents and trademark protection.

## Section 12 Confidentiality

All the software of Q-DAS® and the corresponding documents supplied to the Contract partner by Q-DAS® are strictly confidential information and may not be disclosed to third parties.

## Section 13 Support of the Contract Partner by Q-DAS®

A maintenance contract is signed between the Contract partner and Q-DAS® for the software. The support provided by Q-DAS® is governed by the „Software Maintenance and Support Conditions for Telephone Support“ agreement.

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#### **Section 14 Miscellaneous**

1. Should a clause of the agreement be ineffective or become ineffective in the future, the Contract otherwise remains effective; the Contract partner and Q-DAS<sup>®</sup> hereby agree to an interpretation of the ineffective clause which best reflects the economic aim and purpose of this clause and is effective.
2. This Contract contains all the agreements, which the Contract partners have made; additional or different agreements to this Contract, its cancellation or termination must be in writing to be effective (cf. Section 7 para. 3).
3. The Contract partner can only assign claims on this Contract with the consent of Q-DAS<sup>®</sup>.
4. These license conditions apply exclusively. Q-DAS<sup>®</sup> does not accept order acknowledgements or terms of business of the Contract partners with conditions other than these „License conditions for the Q-DAS<sup>®</sup> Statistics Server“. The Contract partner accepts the validity of these conditions with the acceptance of the first service of Q-DAS<sup>®</sup> within the scope of this contract at the latest. Otherwise, the current „General conditions for the use of software products“ of Q-DAS<sup>®</sup> apply. Amendments of the conditions are published on Internet website of Q-DAS<sup>®</sup> [www.q-das.de](http://www.q-das.de). Q-DAS<sup>®</sup> can refer this amendment to the Contract partner either by e-mail, fax or by letter. Acceptance of the validity of the amended terms of business is deemed to be given if the Contract partner has not refuted the amendment within four weeks from publication on the Internet website of Q-DAS<sup>®</sup> in written form or electronically. The period of refusal is reduced to two weeks from receipt of the information if Q-DAS<sup>®</sup> has informed the Contract partner either by e-mail, fax or by letter concerning the amendment of the terms of business.

#### **Section 15 Place of Performance – Place of Jurisdiction and Governing Law**

1. If disputes occur between the parties, the Contract partner will try first of all to settle these amicably.
2. The place of performance and jurisdiction for all rights and claims arising from the Contract is Weinheim/Bergstrasse (Germany). This agreement concerning the place of jurisdiction and performance only applies to merchants, bodies corporate according to public law or separate assets according to public law and contract parties who, following signing of the Contract, move their domicile or usual place of residence out of the Federal Republic of Germany or whose domicile or whose normal place of residence is not known at the time when the suit is filed.
3. The law of the Federal Republic of Germany shall apply exclusively. the regulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or any other agreements on the unification of international sale or business transaction are not applicable.

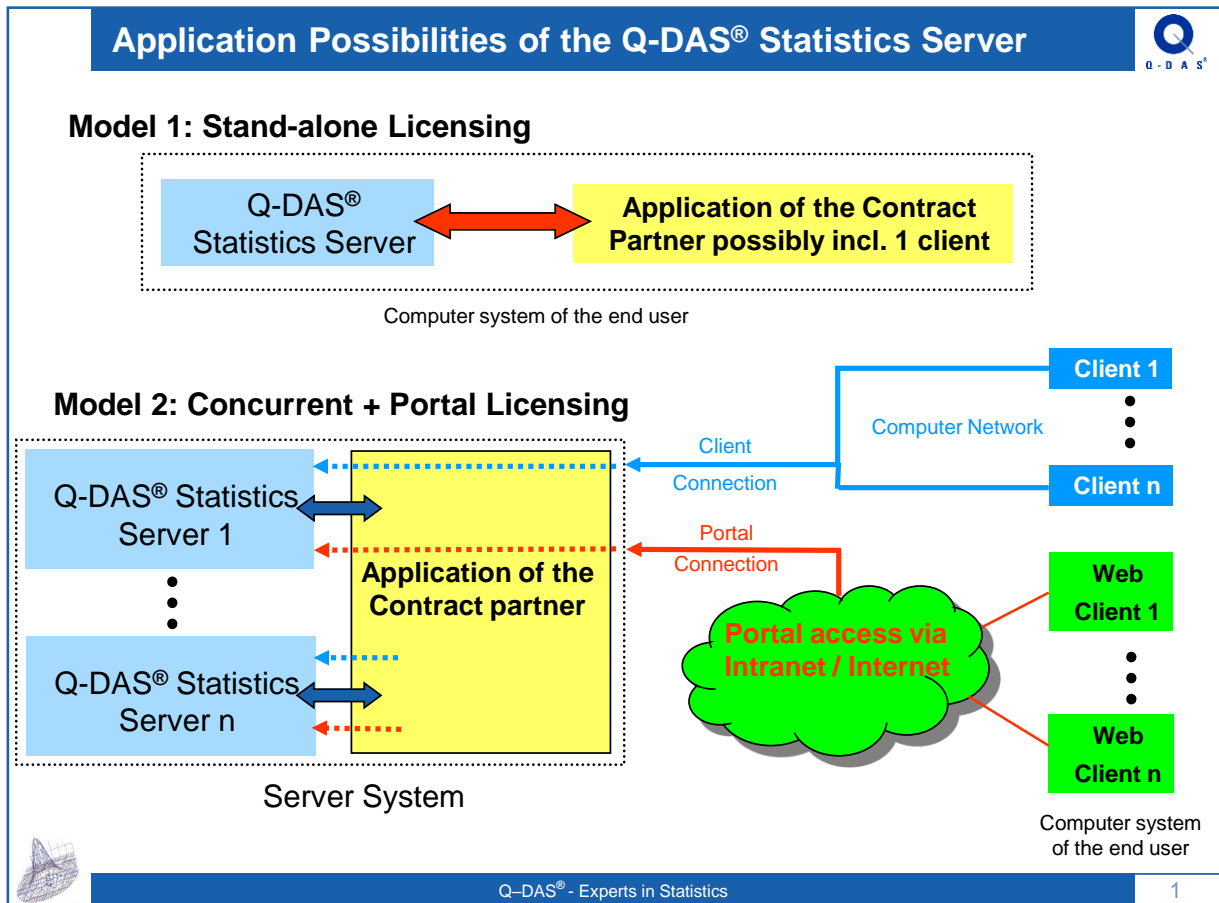


Figure 1: Possible applications of the Q-DAS® statistics server