

# License Agreement For IT-QBase products

IT-QBase provides for all IT-QBase products the following license agreement as presented below.

Two license agreements are presented below.

1. *IT-QBase Evaluation Agreement*
2. *IT-QBase Global License and Maintenance Agreement*

If you are obtaining the Program, as defined herein, for purposes of productive use (other than evaluation, testing, trial "try or buy," or demonstration): By clicking on the "Accept" button below, You accept the IT-QBase Global License and Maintenance Agreement, without modification.

If you are obtaining the Program for the purpose of evaluation, testing, trial "try or buy," or demonstration (collectively, an "Evaluation"): By clicking on the "Accept" button below, You accept both (i) the IT-QBase Evaluation Agreement (the "Evaluation Agreement"), without modification; and (ii) the IT-QBase Global License and Maintenance Agreement (the "License Agreement"), without modification.

The Evaluation Agreement will apply during the term of Your Evaluation.

The License Agreement will automatically apply if You elect to retain the Program after the Evaluation (or obtain additional copies of the Program for use after the Evaluation) by entering into a separate procurement order ("Order") with IT-QBase.

The Evaluation Agreement and the License Agreement are not in effect concurrently; neither modifies the other; and each is independent of the other.

The complete text of each of these two license agreements are as follows.

## IT-QBase Evaluation Agreement

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,  
- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND  
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

### 1. Licenses

1.1 Subject to the terms and conditions of this Agreement, IT-QBase GmbH (LLC),, a corporation existing under the laws of Germany with offices at Hanauer Landstraße 135, 60314 Frankfurt am Main ("IT-QBase") hereby grants You the following non-exclusive and non-transferable license for 15 days to install and execute the object code version of the software and all patches, bug fixes and Updates, if any, thereto supplied by IT-QBase to You during the term of this Agreement (collectively, the "Program");

1.2 The licenses granted under this Agreement are expressly conditioned on your compliance with each of the following conditions:

- a. You shall use the Program solely for evaluation purposes, for not more than 15 days after downloading the Program, and shall not otherwise use it for the benefit of any third parties, including without limitation, your subsidiaries or affiliates;
- b. All copies of the Program must retain IT-QBase's copyright and trademark notices; and,
- c. You must at all times adhere to the terms of this Agreement.

## **2. Warranties and Disclaimer**

THE PROGRAM(S) IS PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND. **IT-QBASE** DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO THE MERCHANTABILITY, TITLE, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THE PROGRAM OR ANY SERVICES FURNISHED HEREUNDER. IN NO EVENT SHALL IT-QBASE BE LIABLE FOR ANY DAMAGES, DIRECT OR INDIRECT, INCLUDING LOST OR ANTICIPATED PROFITS, OR ANY INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER IT-QBASE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF HOWEVER ANY ALLEGED DAMAGES WERE CAUSED. YOU UNDERSTAND, ACKNOWLEDGE AND ASSUME ALL LIABILITY AND RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAM(S).

## **3. Third Party Software**

The Program may contain Programs, as defined in the Eclipse Public License – v 1.0 ("Public License") and You agree to comply with the terms of such Public License to the extent applicable. Such Program(s) are provided "as is" and You acknowledges and agrees that all Contributors, as defined in the Public License" shall have no liability whatsoever relating to your use of the Program(s), that any provision set forth herein that is inconsistent with the Public License is offered by IT-QBase, alone, and that the source code for any Program(s) create by IT-QBase is available to You upon request.

## **4. Term and Termination**

This Agreement shall commence as of the Effective Date and shall remain in effect for 15 days. In addition, IT-QBase may terminate this Agreement and any licenses for convenience at any time, with our without notice. Upon termination of this Agreement, You shall destroy and/or no longer use all Program in your possession or under your control together with all copies thereof in any form. Termination shall not affect obligations that accrued prior to the effective date of termination. Sections 2, 3, 4, 5, 6, 7, 8, 9, and 12 shall survive the termination of this Agreement.

## **5. Proprietary Rights and Information**

IT-QBase owns all rights, title and interest to and in the Programs, You acknowledge IT-QBase's proprietary rights in the Program and You shall use your best efforts to protect and defend the proprietary nature of the Program. You shall not disassemble, decompile, reverse engineer, copy, modify, transcribe, store, translate, sell, lease, or otherwise transfer or distribute any of the Program, in whole or in part, without prior authorization in writing from IT-QBase. Title to all Program and any other such information or document provided to You hereunder shall at all times remain solely with IT-QBase. In the event of any breach of this Section 5, You agree that IT-QBase would suffer irreparable harm and shall therefore be entitled to obtain injunctive relief against You. You further agree that "Confidential Information" means any technical or business information disclosed by IT-QBase by the nature of the information or the circumstances surrounding its disclosure, ought, in good faith, to be treated as confidential and that you shall not disclose to any third party any IT-QBase Confidential Information. Confidential Information does not include information that (i) was or becomes generally available to the public other than as a result of a disclosure by the receiving party, (ii) is already in the lawful or rightful possession of the receiving party at the time of disclosure by the disclosing party, (iii) is obtained by the receiving party from a third party that lawfully and rightfully possesses such information and has not breached any obligations of confidentiality; or (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information. The

obligations under this Section 5 shall survive for a period of three (3) years following termination or expiration of this Agreement.

#### **6. Indemnification**

You agree to indemnify, defend and hold IT-QBase harmless from any and all damages arising from your use of the Program.

#### **7. No Waiver**

Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

#### **8. Severability**

If any provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions hereof shall not be affected thereby.

#### **9. Exports**

You agree not to export or transmit, directly or indirectly, any technical data or products received from IT-QBase except in full compliance with all U.S. Export Administration Regulations and the import/export rules of any other country. Diversion contrary to U.S. or other law is expressly prohibited. You agree to comply with all applicable export laws and regulations and the laws, regulations, and rules of any country or region which apply to Your use of the Programs.

#### **10. Compliance with Law**

Each party shall comply with all applicable laws and regulations of governmental bodies or agencies in its performance under this Agreement.

#### **11. No Assignment**

This Agreement and the licenses granted hereunder may not be assigned, sub-licensed or transferred by You without the prior written consent of IT-QBase.

#### **12. Governing Law**

This Agreement shall be governed by and determined in accordance with the laws of Germany, without regard to its conflict of laws provisions, and You hereby submit to the exclusive jurisdiction of the courts located in Germany. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods ("the Convention"). Rather the rights and obligations of the parties shall be governed as provided in this License Agreement. You acknowledge that the Convention does not apply to this License Agreement or to the resolution of any disputes arising out of or related to this License Agreement.

#### **13. General**

This Agreement is the complete agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. No terms or provisions of this Agreement may be varied, extended or modified, except by a written instrument specifically referring to and executed in the same manner as this Agreement. This Agreement may be signed by the parties in separate counterparts which shall together constitute one and the same agreement.

## IT-QBase Global License and Maintenance Agreement

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,  
- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND  
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

### 1. Licenses

1.1 Subject to the terms and conditions of this Agreement, IT-QBase GmbH (LLC), a corporation existing under the laws of the Germany with offices at Hanauer Landstraße 135, 60314 Frankfurt am Main ("IT-QBase") hereby grants to You the following non-exclusive and non-transferable license for the term specified in the Order, which is incorporated herein by reference upon signature of the Parties.

- a. To install and execute the object code version of the software specified under the heading "Program" in the Order and all patches, bug fixes and Updates thereto supplied by IT-QBase to You during the term of this Agreement (collectively, the "Program") and such Program shall be installed as specified in Order and located at the site specified in Order (the "Site");
- b. To make a reasonable number of copies of the Program for Your own archival or backup use.

1.2 The licenses granted under this Agreement are expressly conditioned on Your compliance with each of the following conditions:

- a. You shall install and execute the Program only on the Equipment at the Site, or on such other computer equipment or at such other site as IT-QBase may approve in writing in advance;
- b. You shall use the Program solely to manage the operations of Your own business and develop applications ("Applications"), and shall not otherwise use it for the benefit of any third parties, including without limitation, Your subsidiaries or affiliates, except as specified herein;
- d. All copies of the Program made by You must retain IT-QBase's copyright and trademark notices; and
- e. You shall permit IT-QBase or its authorized representatives reasonable access to Your facilities during regular business hours to inspect Your Site in order to ensure Your compliance with the terms of this Section 1.2.

1.3 Provided You are current on all fees payable, You may change the Site to another location, provided (i) any applicable fee is paid by You, (ii) the prior use is discontinued, and (iii) You continue to use the Program under the terms of this Agreement. You shall give IT-QBase written notice no less than thirty (30) days prior to such relocation, including the new address. Such new location shall be the Site.

### 2. Delivery; Installation; Acceptance.

2.1 Provided that License has paid the applicable License Fees, IT-QBase shall, on or around the date specified under the heading "Installation Date" in Order (the "Installation Date"):

- a. enable one (1) object code version of the Program and
- b. one (1) copy of the documentation specified under the heading "Documentation" in Order (the "Documentation") to be deliver to You

2.2 You shall be deemed to have accepted the Program upon delivery.

### 3. Maintenance and Support

If You so elect on Order, IT-QBase shall perform the following maintenance and technical support services (the "Maintenance and Support Services") commencing on the Installation Date. IT-QBase provides different maintenance programs as described in the document "IT-QBase Maintenance Agreement.pdf" (which can be found on our web site's download section). The maintenance will be renewed automatically until the contract will be cancelled at least 6 weeks before effective date. The default or standard program is the "Silver Maintenance Program".

#### **4. Fees**

You shall pay the license fees for the Program (the "License Fees"), the fees for the Maintenance and Support Services (the "Maintenance and Support Fees" as set forth in Order).

#### **5. Payments.**

5.1 All License Fees and Subscription Fees are due on the Effective Date, and any subsequent Subscription Fees are due at least 30 days prior to the renewal term for such subscription license and receipt of invoice.

The Maintenance and Support Fees are due annually, in advance, beginning on the Effective Date and thereafter on each anniversary of the Effective Date. IT-QBase shall invoice You for the Expenses and any other payments due under this Agreement no more often than once per calendar month. Payment shall be due within thirty (30) days following receipt by You of such invoices.

All payments shall be made in United States dollars if You are principally located in the United States. All payments shall be made in Euros if You are not principally located in the United States.

5.2 All payments not made when due shall be subject to late charges of the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law.

#### **6. Taxes**

You shall pay all sales, use and excise taxes relating to, or under, this Agreement, exclusive of taxes based on or measured by IT-QBase's net income, unless You are exempt from the payment of such taxes and provides IT-QBase with evidence of such exemption.

#### **7. Third Party Software**

7.1 You acknowledge and agree that the software specified under the heading "Necessary Third Party Software" on the Order (the "Necessary Third Party Software") and additional IT-QBase Programs under the heading "Additional IT-QBase Software" is necessary for the installation and operation of the Program and must be licensed separately by You. You agree that the Necessary Third Party Software is not the subject of this Agreement, and IT-QBase shall not be responsible for the installation or maintenance of the Necessary Third Party Software, and makes no representations or warranties regarding the Necessary Third Party Software whatsoever. Any fees for the Necessary Third Party Software shall be borne by You and paid directly to the licensor of the Necessary Third Party Software.

7.2 The Program may contain Programs, as defined in the Eclipse Public License – v 1.0 ("Public License") and You agree to comply with the terms of such Public License to the extent applicable. Such Program(s) are provided "as is" and You acknowledge and agree that all Contributors, as defined in the Public License" shall have no liability whatsoever relating to Your use of the Program(s), that any provision set forth herein that is inconsistent with the Public License is offered by IT-QBase, alone, and that the source code for any Program(s) create by IT-QBase is available to upon Your request.

#### **8. Representations; Limited Warranties**

8.1 Your *Warranty*. You represent and warrant that all necessary corporate proceedings have been taken to authorize the transactions contemplated by this Agreement and that it shall abide by the terms and condition of this Agreement.

**8.2 IT-QBase Warranty.** IT-QBase represents and warrants that (i) all necessary corporate proceedings have been taken to authorize the transactions contemplated by this Agreement, and (ii) it is the owner or an authorized licensee of the Program including all intellectual property rights therein, under copyright, patent, trademark, trade secret, and other applicable U.S. law.

**8.3 Software Warranty.** For a period of ninety (90) days following the Installation Date and during the term of Maintenance and Support Services, if any, obtained by You, IT-QBase shall use reasonable efforts to correct any component of the Program that causes a reproducible error that result in (i) a total loss of functionality of the Program (i.e., "crashing"), (ii) the generation of error messages, or (iii) the generation of errors in automatic data creation or calculations, *provided* such error is reported to IT-QBase by You in a writing that describes such error in detail. IT-QBase shall have no obligation to provide corrections or replacements in the event (i) You modify the Program (or any component thereof) without IT-QBase's prior written consent; (ii) the error is caused in whole or in part by persons other than IT-QBase, including without limitation, Your failure to properly enter data; or (iii) the error is caused in whole or in part by Your installation or use of the Program in association with operating environments and platforms other than those specified by IT-QBase. In the event that IT-QBase determines that Your report of an error is incorrect, IT-QBase may charge You for IT-QBase's time at IT-QBase's published rates then in effect.

**8.4 DISCLAIMER.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 11, IT-QBASE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THE PROGRAMS OR SERVICES FURNISHED HEREUNDER. IN NO EVENT SHALL IT-QBASE BE LIABLE FOR ANY LOST OR ANTICIPATED PROFITS, OR ANY INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER IT-QBASE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IT-QBASE DOES NOT WARRANT THAT THE PROGRAMS WILL OPERATE UNINTERRUPTED OR ERROR-FREE.

**8.5 Limitation.** In no event shall IT-QBase be liable to You for damages in excess of a portion of the License Fees paid to IT-QBase determined by amortizing such License Fees on a straight-line basis over five years.

## **9. Non-Solicitation of IT-QBase Employees**

You agree that You shall not, for a period of two (2) years following the Effective Date, directly or indirectly employ, offer to employ, or solicit any other contractual or financial arrangement with, any person who has been an employee of or independent contractor to IT-QBase, without first obtaining the prior written approval of IT-QBase.

## **10. Term; Termination**

**10.1 Term.** This Agreement shall commence as of the Effective Date and shall remain in effect until terminated as provided herein.

**10.2 Termination of Maintenance and Support Services.** IT-QBase may terminate the Maintenance and Support Services or may modify the Maintenance and Support Fees by providing You written notice at least thirty (30) days prior to an anniversary of the Effective Date. You may elect to terminate the Maintenance and Support Services by providing IT-QBase written notice at least sixty (60) days prior to an anniversary of the Effective Date. In the event of such termination, IT-QBase shall no longer be obligated to provide the Maintenance and Support Services, and You shall no longer be obligated to pay the Maintenance and Support Fees. In the event that You have terminated the Maintenance and Support Services, You may elect to have IT-QBase recommence the provision of the Maintenance and Support Services, provided that You pay to IT-QBase (i) all fees attributable to prior periods for which You elected not to receive the Maintenance and Support Services, and (ii) the then-current fees for the Maintenance and Support Services.

**10.3 Termination for Insolvency.** This Agreement and all licenses granted hereunder shall automatically terminate if You (i) admits in writing its inability to pay its debts generally as they become due, (ii) makes a general assignment for the benefit of creditors, (iii) institutes proceedings to be

adjudicated a voluntary bankrupt, or consents to the filing of a petition of bankruptcy against it, (iv) seeks reorganization under any bankruptcy act, or consents to the filing of a petition seeking such reorganization, or (v) has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of its property or providing for the liquidation of its property or business affairs.

10.4 *Termination for Default.* Should either party commit a material breach of its obligations hereunder, or should any of the representations of either party in this Agreement prove to be untrue in any material respect, the other party may, at its option, terminate this Agreement, by thirty (30) days written notice of termination (or, in the event of failure by You to make any payment when due, fifteen (15) days written notice of termination), which notice shall identify and describe the basis for such termination. If, prior to expiration of such period, the defaulting party cures such default, termination shall not take place.

10.5 *Effect of Termination.* Upon termination of this Agreement, You shall destroy all Program and Documentation in its possession or under its control together with all copies thereof in any form. Termination shall not affect obligations that accrued prior to the effective date of termination. The obligations of the parties under Sections 11.3, 11.4, 12, 13.5, 14, 15, 25, 26 and 27 shall survive the termination of this Agreement.

## **11. Proprietary Rights and Information**

You acknowledge IT-QBase's proprietary rights in the Program and the Documentation and shall use its best efforts to protect and defend the proprietary nature of the Program and the Documentation. You shall own all rights, title and interest to any Applications. IT-QBase retains all rights not expressly granted. You shall not disassemble, decompile, reverse engineer, copy, modify, transcribe, store, translate, sell, lease, or otherwise transfer or distribute any of the Program or the Documentation, in whole or in part, without prior authorization in writing from IT-QBase. Title to all Program and the Documentation shall at all times remain solely with IT-QBase. In the event of any breach of this Section 14, You agree that IT-QBase would suffer irreparable harm and shall therefore be entitled to obtain injunctive relief against You.

## **12. Confidential Information**

12.1 *Definition.* "Confidential Information" means any technical or business information disclosed by a party (i) that is marked or designated by the disclosing party as "confidential" or "proprietary", or (ii) that, by the nature of the information or the circumstances surrounding its disclosure, ought, in good faith, to be treated as confidential.

12.2 *Exclusions.* Confidential Information does not include information that (i) was or becomes generally available to the public other than as a result of a disclosure by the receiving party, (ii) is already in the lawful or rightful possession of the receiving party at the time of disclosure by the disclosing party, (iii) is obtained by the receiving party from a third party that lawfully and rightfully possesses such information and has not breached any obligations of confidentiality; or (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information.

12.3 *Non-Disclosure.* The receiving party shall not use the disclosing party's Confidential Information except in connection with performance under this Agreement, and shall not disclose or otherwise make available any of the disclosing party's Confidential Information to anyone, including third parties and employees, except those employees or agents of the receiving party who need to know the Confidential Information in order for such party to perform under this Agreement. The receiving party shall (i) instruct any such employees and agents not to disclose or otherwise make available any of the disclosing party's Confidential Information to anyone, and (ii) be liable to the disclosing party for any action or inaction of such employees or agents that would violate this Agreement had the action or inaction been that of the receiving party directly.

12.4 *Required Disclosures.* Notwithstanding the foregoing, the receiving party may disclose the disclosing party's Confidential Information to the extent that such disclosure is required by law or court order, provided, however, that the receiving party provides to the disclosing party prior written notice of

such disclosure and reasonable assistance in obtaining an order protecting the Confidential Information from public disclosure.

12.5 *Survival*. The obligations under this Section 15 shall survive for a period of three (3) years following termination or expiration of this Agreement.

### **13. Publicity**

Neither party shall issue a press release announcing the business relationship established by this Agreement without the prior written consent of the other party. IT-QBase may, however, disclose publicly (i) that You are a customer of IT-QBase, and (ii) the results of any tests or quality assurance evaluations conducted by You on the Program. Upon the request of IT-QBase, You shall serve as a reference for IT-QBase and allow other customers of IT-QBase, who are not competitors of You, to visit Your facilities, during reasonable business hours and upon reasonable prior notice, to observe the operation of the Program being used by You pursuant to the license granted to You under this Agreement.

### **14. Indemnification**

IT-QBase shall indemnify and hold You harmless from and against any claims, actions, or demands resulting from the actual infringement by the Program of any patent, trademark, copyright, or other intellectual property right of any third party. You shall permit IT-QBase to replace or modify any affected Program so as to avoid infringement, or to procure the right for You to continue its use of such items. If neither of such alternatives is reasonably possible, the infringing items shall be returned to IT-QBase, and IT-QBase's sole liability shall be to refund a portion of License Fees paid therefor by You determined by amortizing the License Fees on a straight line basis over three years. IT-QBase shall have no obligation hereunder for or with respect to claims, actions, or demands alleging infringement which arise by reason of (i) the combination of Program with any software or hardware not supplied by IT-QBase, or (ii) the failure of You to install bug fixes, patches or Upgrades provided by IT-QBase. The foregoing indemnities are conditioned on prompt notice of any claim, action, or demand for which indemnity is claimed, complete control of the defense and settlement thereof by IT-QBase, and the cooperation of You in such defense.

### **15. No Agency**

The parties hereto are independent contractors and nothing in this Agreement shall create or imply any agency relationship between the parties, nor shall the Agreement be deemed to constitute a joint venture or partnership between the parties. Neither party shall have authority to bind or otherwise obligate the other in any manner whatsoever.

### **16. Notice**

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be considered effective when delivered in person or by courier or when deposited with a recognized express delivery service or in the U.S. mail as certified mail, return receipt requested, postage prepaid, and addressed to the party at the address noted above, unless by such notice a different address shall have been designated in writing.

### **17. No Waiver**

Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

## 18. Severability

If any provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions hereof shall not be affected thereby.

## 19. Force Majeure

Neither party shall be in default if failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's control, including acts of God, civil commotions, strikes, labor disputes, and governmental demands or requirements.

## 20. Exports

You agree not to export or transmit, directly or indirectly, any technical data or products received from IT-QBase except in full compliance with all U.S. Export Administration Regulations and the import/export rules of any other country. Diversion contrary to U.S. or other law is expressly prohibited. You agree to comply with all applicable export laws and regulations and the laws, regulations, and rules of any country or region which apply to Your use of the Programs.

## 21. Audit

You shall maintain complete and accurate records relating to Your obligations under this Agreement, and such records shall contain sufficient information to permit IT-QBase to confirm Your compliance with this Agreement. You shall retain such records throughout the term of this Agreement and for at least two (2) years after termination of this Agreement, during which time IT-QBase, or IT-QBase-appointed auditors, shall have the right, at IT-QBase' expense, upon thirty (30) days' prior written notice, no more frequently than one (1) time per calendar year, to inspect such records and Your facilities during normal business hours to verify Your compliance with this Agreement. Without limiting in any way the foregoing provisions of this paragraph, IT-QBase shall also have the right to, at any time during and throughout the term of this Agreement and without further notice to You, monitor and audit usage of the Program(s) for the purpose of determining compliance with this Agreement. In the event that any audit (whether conducted in person or electronically or otherwise) reveals, for any period at issue, an underpayment by You, then, in addition to any other remedies available to IT-QBase in law or equity, You shall remit to IT-QBase all amounts due (including applicable interest) within thirty (30) days after receiving notice thereof from IT-QBase and, if the amount of the underpayment is in excess of five percent (5.0%) of the applicable fees for the applicable period, then You shall also bear the reasonable cost of such audit.

## 22. Compliance with Law

Each party shall comply with all applicable laws and regulations of governmental bodies or agencies in its performance under this Agreement.

## 23. No Assignment

This Agreement and the licenses granted hereunder may not be assigned, sub-licensed or transferred by You without the prior written consent of IT-QBase.

## 24. Governing Law

This Agreement shall be governed by and determined in accordance with the laws of Germany, without regard to its conflict of laws provisions, and You hereby submit to the exclusive jurisdiction of the courts located in Germany. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods ("the Convention"). Rather the rights and obligations of the parties shall be governed as provided in this License Agreement. You acknowledge that the Convention does not apply to this License Agreement or to the resolution of any disputes arising out of or related to this License Agreement.

## 25. General

This Agreement (including the attached Exhibits) is the complete agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. No terms or provisions of this Agreement may be varied, extended or modified, except by a written instrument specifically referring to and executed in the same manner as this Agreement. This Agreement may be signed by the parties in separate counterparts which shall together constitute one and the same agreement.

Best regards / mit freundlichen Grüßen



Adrine Hairapetian  
(Managing Director)

**IT-QBase GmbH**  
Hanauer Landstraße 135  
60314 Frankfurt a. M.  
Tel. +49 (0) 69 366 021 26  
Fax +49 (0) 69 366 021 27