



## **QAS Ltd. License Terms and Conditions**

**QAS Ltd. TERMS AND CONDITIONS**  
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## **QAS Ltd.® LICENSE TERMS AND CONDITIONS**

This license Agreement is an agreement between the customer referred to in the Order Confirmation and QAS Ltd. ("QAS"), and covers your license for use of the Licensed Programs, Documentation and the Data we provide to you from time to time. Your use of the Data as well as other particular uses of the Licensed Products may be governed by third party Data Provider Licenses and other terms and conditions which can be viewed on Our Website and which form part of this License Agreement. Defined terms are found in **section 31**.

### **1 License**

By installing and using the Licensed Products, you acquire and agree to a non-exclusive license to use the Licensed Products subject to the terms of this Agreement.

### **2 Term**

Subject to the terms of this Agreement, this Agreement:

- (a) commences on the Effective Date and continues for the Initial License Period; and
- (b) may be extended after the Initial License Period for an Additional Term (and thereafter, subsequent Additional Terms) upon the payment of the Renewal Fee, unless terminated in accordance with **section 16** of this Agreement.

### **3 Payment**

- 3.1 In consideration for the license to use the Licensed Products for the Initial License Period, you agree to pay to us the Initial License Fee in accordance with this Agreement.
- 3.2 In consideration for the license to use the Licensed Products for an Additional Term, you agree to pay to us the Renewal Fee in accordance with this Agreement.
- 3.3 We may increase the Renewal Fee in respect of an Additional Term by giving you notice in writing at least sixty (60) days prior to the commencement of that Additional Term:
  - (a) by an amount which represents the proportionate increase (if any) in the Consumer Price Index published by the US Bureau of Labor Statistics (U.S. All items average) during the most recent period of twelve months (for which the index provides figures) prior to the date of the notice; and/or
  - (b) by an amount which reflects any New Versions you have installed; and/or
  - (c) by an amount considered by us to be reasonable if we determine that the existing Renewal Fee does not give us an appropriate return when compared to returns from other of our customers, but in no event will any such increase be greater than ten (10) percent of the previous Renewal Fee; and/or
  - (d) by an amount sufficient to pass on any increase in the price of the Data notified to us by the relevant Data Provider
- 3.4 Unless otherwise agreed in writing, all fees payable under or in relation to this Agreement are exclusive of all taxes, duties and government charges. You are responsible for all taxes, duties and government charges, other than taxes, duties and government charges based on our income. If any such new or increased tax, duty or government charge is assessed, we will issue an invoice for the increased tax, duty or charge, and the invoice shall be payable within thirty (30) days of the date of invoice.
- 3.5 You must pay all relevant fees to us (including any tax or duty component) within thirty (30) days of the date of our invoice to you for the relevant fee. If you fail to pay the relevant fee by the due date, we reserve the right to charge interest on any unpaid fee at eighteen (18) per cent per annum or the highest rate permitted by applicable law, whichever is lower.

### **4 Ownership**

This Agreement does not convey to you any intellectual property or other ownership rights in the Licensed Products.

### **5 Delivery and risk**

- 5.1 On or before the Effective Date we will deliver to you the agreed number of Licensed Products on the agreed media. Any Data Updates, New Releases and New Versions delivered to you will also be delivered on the agreed media.
- 5.2 Title and risk of loss or damage in the media passes to you on delivery.

### **6 Installation**

You are responsible for installing the Licensed Programs and Data on your equipment. We will assist you with installation in accordance with section 13 - Technical support. You must install the Licensed Programs and Data in accordance with the Documentation.

### **7 Restrictions on use**

- 7.1 You agree to:
  - (a) use the Licensed Products strictly in accordance with the terms and conditions of this Agreement and in accordance with the Documentation and any reasonable procedures, instructions and guidelines issued by us;
  - (b) use the Licensed Products solely in conjunction with the operating system and applications (if any) and solely on the equipment and at the location (if any) specified in the Order Confirmation;
  - (c) use the Licensed Products only for your own internal business purposes and solely for the purpose of obtaining and managing addresses, postcodes and other elements of the Data;
  - (d) ensure that you do not exceed your Authorized Use and that, subject to **section 7.2(e)**, all persons who operate or access the Licensed Programs and Data are your employees (including temporary employees or individual independent contractors acting on your behalf) only, and are made aware of and abide by all relevant terms and conditions of this Agreement. You must have a reasonable mechanism in place to ensure that your access to the Licensed Programs and Data does not exceed the Authorized Use. You will be responsible for the acts of all persons in relation to the access or use of your copy of the Licensed Programs and Data;
  - (e) keep the Licensed Products confidential and secure and to back up your data in accordance with reasonable industry practice;
  - (f) only install and use the Licensed Products in, and access the Licensed Products from, those countries specified in the Order Confirmation or Special Terms;
  - (g) comply with all laws and regulations applicable to your use of the Licensed Products including without limitation (a) all applicable rules, regulations, requirements and orders of the U.S. Federal Trade Commission or state regulatory authorities relating to data privacy and protection, (b) the terms of any data privacy policy that you publish or represent as being applicable to data that you handle, (c) if applicable, the terms of the Safe Harbor Principles issued by the United States Department of Commerce on July 21, 2000, and (d) any other legislation, regulations, or codes of practice applicable to your use of the Licensed Products. We are not liable or responsible for your breach of these laws or regulations even if it occurs in connection with your use of the Licensed Products;
  - (h) comply with all United States and other applicable export laws and regulations with respect to the Licensed Products and obtain, at your own expense, any required export licenses or other authorizations, copies of which you shall provide to us prior to any export or re-export of a Licensed Product for which such export licenses or other authorizations may be required;
  - (i) use or install the Licensed Products on the internet, an extranet or upon any other similar type of electronic communications network except in accordance with any terms and conditions relating to such use that are specified in an Order Confirmation.

- (j) take all reasonable steps to prevent the occurrence of any of the events in **section 7.2** and notify us immediately if you become aware of the happening of any of those events.

7.2 You agree not to:

- (a) without our prior written consent, copy, reproduce, or translate the Licensed Products;
- (b) create a derivative work from the Licensed Products by any means;
- (c) decompile, disassemble or reverse engineer the Licensed Programs or Data;
- (d) give, lease, license, rent, assign, transfer, disclose or otherwise make available the Licensed Products (in any form) to any other person without our prior written consent;
- (e) permit any other person or company (including your related or associated companies) to use the Licensed Products, for your benefit or otherwise, without our prior written consent; If you wish to outsource your information technology requirements and this involves a third party taking over the management of the Licensed Programs or Data, we will discuss with you the options, if any, to enable this to occur but at no time will the third party be permitted to use the Licensed Programs or Data other than for your own internal business requirements;
- (f) use the Licensed Products for the business purposes of any other person (either conventionally or on the Internet, an intranet or an extranet) except in accordance with section 9 below;
- (g) do anything which adversely affects or damages our interests or the interests of our related or associated companies or of any of the Data Providers, including ownership interests in the Licensed Products.
- (h) use those of the Licensed Programs which are interactive, either:
  - (i) as a batch tool; or
  - (ii) to build lists;
  - (i) remove or alter any existing patent, copyright, trade mark or other proprietary notice on or attached to the Licensed Products, and you must ensure that all such proprietary notices contained in on or attached to the Licensed Products are reproduced on any copies or materials derived from any of the Licensed Products which you may receive.

Because unauthorized use or transfer of the Licensed Products is likely to diminish substantially the value of such Licensed Products and irreparably harm us and may not be susceptible of cure by the payment of monetary damages, if you breach the provisions of **section 7** of this Agreement, we shall be entitled to obtain injunctive and/or other equitable relief, in addition to other remedies afforded by law, to prevent or restrain a breach of **section 7** of this Agreement.

**8 Back up or archival copies**

You may make a single copy of the Licensed Programs and Data provided to you and solely for the purpose of back up and restoration.

**9 Service bureau**

If you would like to use the Licensed Programs and Data in any Service Bureau arrangement you must obtain our prior written consent, such consent to be subject to the following conditions:

- (a) you must observe any restrictions (including any absolute bar) on the use of Data in Service Bureau arrangements set out in any Data Provider License or as we may otherwise advise you in writing; and
- (b) you must comply with any terms and conditions relating to the use of the Licensed Programs and Data in any Service Bureau arrangement as set out on Our Website.

**10 Additional use**

If you would like to increase your Authorized Use of the Licensed Programs and Data, you must first notify us, identifying the additional use required. We will respond by advising you of the applicable license fee. Upon receiving confirmation that these fees are acceptable to you, we will send you an Order Confirmation and invoice you for the addition to your Authorized Use. Upon receipt by us of payment, this Agreement will be deemed to be amended to reflect the addition to your Authorized Use and revised fees.

**11 Transfer**

If you wish to use the Licensed Programs and Data on equipment, at a location or in conjunction with applications or an operating system different from those specified in the Order Confirmation, you must first notify us, identifying the alternate equipment, location, application or operating system. We will respond by advising you of whether such different use is permitted and, if so, the fees and other conditions if any associated with such different use including by way of conditions located on Our Website. Upon receiving confirmation that you wish to proceed, we will send you an Order Confirmation and invoice you for the applicable fees. Upon receipt by us of payment, this Agreement will be deemed to be amended to reflect such different use and other conditions (if any).

**12 Data Updates, New Releases and New Versions**

- 12.1 We will issue you Data Updates within a reasonable period of time after receiving them from the relevant Data Provider. If any particular Data Provider alters the interval for delivery of Data Updates, we will offer a matching alteration to the provision by us to you of the relevant Data Update. We may charge a reasonable additional fee to the Initial License Fee or Renewal Fee which reflects a more frequent provision of the relevant Data Update, provided that you are not obliged to accept a more frequent provision of Data Updates than that prevailing at the Commencement Date.
- 12.2 We may issue you New Releases from time to time. Any such New Releases will form part of the Licensed Programs for the purposes of this Agreement and are subject to the terms and conditions of this Agreement as if they formed part of the original Licensed Programs.
- 12.3 You must install Data Updates and New Releases issued to you within one calendar month of receipt.
- 12.4 New Versions are not included in the Initial License Fee or Renewal Fee. We will advise you of the availability of New Versions from time to time and of the fees and any other conditions in respect of such New Versions. You are not obliged to take New Versions, however we reserve the right to discontinue the provision of Data Updates to you by giving you at least twelve (12) months notice in writing if the following conditions are met:
  - (i) either your version of the Licensed Programs has been superseded by more than two New Versions, or the media upon which your Data Updates is supplied is obsolete and you are unable to accept an alternative media; and
  - (ii) a technically feasible upgrade path to our most recent New Version is available from us.
- 12.5 Unless otherwise agreed, this Agreement applies to New Versions which will be subject to the terms and conditions of this Agreement as if they were the original Licensed Programs.

**13 Technical support**

- 13.1 We will provide you with support services relating to the Licensed Products in accordance with our Support Services Policy. We may amend such policy from time to time by giving you at least twelve (12) months notice, such notice to be provided on Our Website. You acknowledge that the provision of support services is conditional upon you complying with your responsibilities as set out in our Support Services Policy. Where you have obtained the Licensed Products through a QAS Business Partner, the QAS Business Partner may provide you with support services in the first instance unless we agree otherwise.

13.2 Charges for any services not included within this Agreement will be invoiced to you, payable within thirty (30) days of the date of invoice. These charges will be at our rates as may exist from time to time and which we will notify to you prior to the provision of the services.

13.3 We are not obliged to provide you with support services relating to versions of the Licensed Products which meet the conditions specified in **sections 12.4(i) and 12.4(ii)**.

#### **14 Warranties**

14.1 Subject to the terms and conditions of this Agreement, we warrant that the Licensed Programs will conform to the description specified in the Documentation provided that the Licensed Programs are properly used in accordance with the Documentation and on the appropriate operating system and provided also that you are in compliance with your responsibilities as set out in our Support Services Policy. Where the Licensed Programs do not so conform and you can identify to us the failure to conform we will at our option replace the Licensed Programs with Licensed Programs that do so conform. The replacement of the Licensed Programs with Licensed Programs which conform to the description specified in the Documentation will be our sole obligation and liability relating to a failure of the Licensed Programs to conform to the description specified in the Documentation notwithstanding any other provision of this Agreement.

14.2 **EXCEPT AS SET FORTH IN SECTION 14.1 ABOVE, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCTS, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WE SPECIFICALLY DISCLAIM ANY WARRANTY THAT THE FUNCTIONS CONTAINED IN THE LICENSED PRODUCTS WILL MEET YOUR REQUIREMENTS OR WILL OPERATE IN COMBINATIONS OR IN A MANNER SELECTED FOR USE BY YOU, OR THAT THE OPERATION OF THE LICENSED PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.**

14.3 Our warranties in this Agreement are conditional upon:

- (a) you complying with your obligations under this Agreement;
- (b) no alterations being made to the Licensed Products by any person other than us; and
- (c) no incorrect use, abuse or corruption of the Licensed Products by you.

#### **15 Liability and indemnification**

15.1 You acknowledge that in entering into this Agreement you have not relied in any way on our representations, descriptions, illustrations, specifications, skill or judgment except as expressly specified in this Agreement and that you have satisfied yourself as to the condition and suitability of the Licensed Products for your purposes. You acknowledge that the Licensed Products have not been developed to meet your particular requirements.

15.2 **IN NO EVENT SHALL WE BE LIABLE TO YOU FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, MULTIPLE OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STATUTE, STRICT LIABILITY OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.**

15.3 **IN NO EVENT SHALL OUR LIABILITY TO YOU UNDER THIS AGREEMENT OR FOR ANY MATTER OR CAUSE OF ACTION ARISING IN CONNECTION HEREWITH EXCEED THE AMOUNT OF THE INITIAL LICENSE FEE PAID BY YOU TO US UNDER THIS AGREEMENT.**

15.4 Prior to making any claim against us for breach of this Agreement, negligence or any other action, you must give us a reasonable opportunity to remedy the defect or breach

the subject of the claim. We will not be liable for any such defect or breach which we have remedied within a reasonable time.

15.5 You will indemnify us and keep us indemnified against all and any demands, claims, actions and proceedings made by any third person in connection with or arising out of:

- (a) your use of the Licensed Programs in combination with other programs, or items or any modification you make to the Licensed Programs, constituting an infringement of that person's intellectual property rights;
- (b) any alleged mis-use by you of the Data;
- (c) any breach by you of a Data Provider License; and
- (d) your continued use of the Licensed Programs in circumstances where you have been requested by us not to use the Licensed Programs due to an intellectual property infringement claim against us and you have been provided with a suitable alternative under **section 15.7**.

15.6 We will indemnify you and keep you indemnified against all and any demands, claims, actions and proceedings ("Claims") made by any third person alleging that the Licensed Programs infringe the intellectual property rights of any third party provided that:

- (a) you must advise us in writing immediately you become aware of any Claims against you that such use infringes the third party's intellectual property rights;
- (b) you give us immediate and complete control of such Claims;
- (c) you give us all reasonable assistance in relation to such Claims; and
- (d) the Claims do not arise as a result of your use of the Licensed Programs or Documentation in conjunction with other programs or items we have not approved.

15.7 In the event that any Licensed Program is held in a suit or proceeding to infringe any intellectual property right of a third party, and the use of such Licensed Program is enjoined, or we reasonably believe that it is likely to be found to infringe or constitute a misappropriation, or likely to be enjoined, then we may, at our sole cost and expense, either (a) procure for you the right to continue using such Licensed Program, (b) modify such Licensed Program so that it becomes non-infringing, without affecting the basic functionality of such Licensed Program, provided, however, that if (a) and (b) are not reasonably practicable, we shall have the right, in our sole discretion, to terminate this Agreement with respect to such Licensed Program. Upon such termination we will refund to you the proportionate amount of the relevant License Fees you have paid to us to use the relevant Licensed Programs referable to the balance of the relevant period.

15.8 We will have no obligation for any claim of infringement arising from: (a) any combination of the Licensed Programs with other programs, data or equipment, where such infringement would not have occurred but for such combination; (b) the adaptation or modification of the Licensed Programs, where such infringement would not have occurred but for such adaptation or modification; (c) the use of the Licensed Programs in an application for which it was not designed or intended, where such infringement would not have occurred but for such use; (d) your continued use of a version of the Licensed Programs other than the most recently released version, where such infringement would not have occurred if such most recently released version had been used; or (e) a claim based on intellectual property rights owned by you or any of your affiliates.

15.9 The above indemnity states our entire liability in respect of the infringement of the intellectual property rights of any third party. This indemnity will not apply to the Data.

#### **16 Termination**

16.1 We may immediately terminate this Agreement (or part of it in respect of a particular Licensed Product) by notice in writing to you if:

- (a) you materially breach any term or condition of this Agreement which is capable of remedy and fail to remedy that breach within thirty (30) days of being notified of the breach in writing;
- (b) you materially breach any term or condition of this Agreement which is incapable of remedy;

- (c) you fail to pay any fee payable under this Agreement within thirty (30) days of the due date;
  - (d) our right to distribute any of the Data is terminated for any reason or expires;
  - (e) we decide, for any reason, not to continue distributing any of the Data and give you at least twelve (12) months notice in writing of such discontinuance; or
  - (f) you become insolvent, file or have filed against you a petition under any chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (or any similar petition under any insolvency law of any jurisdiction), propose any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, make an assignment or trust mortgage for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any of your property or business.
- 16.2 You may terminate this Agreement (or part of it in relation to a particular Licensed Product) by notice in writing to us if:
- (a) we materially breach any term or condition of this Agreement which is capable of remedy and fail to remedy that breach within thirty (30) days of being notified of the breach in writing;
  - (b) we materially breach any term or condition of this Agreement which is incapable of remedy;
  - (c) we become insolvent, file or have filed against us a petition under any chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (or any similar petition under any insolvency law of any jurisdiction), propose any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, make an assignment or trust mortgage for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to our any of our property or business; or
  - (d) you give us written notice of termination at least thirty (30) days prior to the next Renewal Date, in which case such termination will be effective on the next Renewal Date.
- 16.3 If this Agreement (or part of it in relation to a particular Licensed Product) is terminated, you must immediately stop using the relevant Licensed Products, permanently erase the Licensed Programs, Data and, all related files from your computer and, at your cost, immediately return all copies of the Licensed Products to us and certify to us that you have complied fully with this section. If only part of this Agreement is terminated, this section applies to the Licensed Products subject to such termination.
- 16.4 If this Agreement (or part of it) is terminated by us because our right to distribute the Data is terminated or expires or because we decide, for any reason, not to continue distributing the Data, we will refund to you the proportionate amount of the relevant License Fees you have paid to us to use the relevant Data referable to the balance of the relevant period.
- 16.5 Termination of this Agreement (or part thereof) is without prejudice to any rights which may have accrued prior to termination.

## 17 Performance

We may perform our obligations under this Agreement through third parties who will perform those obligations on our behalf.

## 18 Audit

You agree, upon reasonable notice from us, to permit us to enter any of your premises and to allow and assist us to access any of your equipment at any time during your normal business hours (and irrespective of whether we have terminated this Agreement or not), in order to verify that your use and/or possession of the Licensed Products is in accordance with this Agreement. We agree to keep confidential any confidential information obtained by us in the course of such an inspection, save for the purpose of legal proceedings or obtaining legal advice.

## 19 Data provider terms and conditions

- 19.1 You agree to comply with the terms and conditions of any Data Provider License. Data Provider Licenses are the specific terms and conditions of a Data Provider relating to the use of that Data Provider's Data. The relevant Data Provider Licenses are set forth on Our Website, form part of this Agreement and are incorporated by reference into this Agreement. You acknowledge that we are entitled to enforce any Data Provider License directly against you.
- 19.2 You acknowledge that Data Provider Licenses are subject to change from time to time as mandated by Data Providers and that the terms upon which we provide Data which is not the subject of an express Data Provider License may also be changed by Data Providers. We will give you reasonable notice of any such changes to these Data Provider Licenses. The terms of these Data Provider Licenses are available on Our Website. If you find such changes unacceptable, you may terminate the relevant Data Provider License and discontinue use of the associated Data. If such termination occurs prior to a Renewal Date, upon your certification that you have deleted and ceased all use of the relevant Data, we will refund to you the proportionate amount of the relevant license fees you have paid to use the relevant Data referable to the balance of the relevant period.

## 20 Special terms

You agree to comply with any Special Terms. Special Terms are any terms and conditions additional to the terms set out in this document that are specified in the Order Confirmation. The Special Terms (if any) will form part of this Agreement.

## 21 Conflicting terms

In the event of conflicts arising between the terms of this Agreement and any other terms and conditions mentioned in this Agreement or any Data Provider License, the following ascending order of priority (with (1) having the highest priority and (3) having the least) will prevail:

- (1) Data Provider License;
- (2) Special Terms and conditions;
- (3) The main body of this Agreement, including any terms and conditions located on Our Website;

## 22 Geographic scope

Use by you of the Licensed Products outside any countries referred to in the Order Confirmation (including in any Special Terms) could breach the terms of applicable Data Provider Licenses and you would not be entitled to technical support services in non-agreed countries.

## 23 QAS Business Partners

We have agreements with QAS Business Partners. When you order Licensed Products marketed to you by a QAS Business Partner, we license the Licensed Products to you under this Agreement. The QAS Business Partner, rather than QAS, is responsible for offering support services to you unless we agree otherwise. You acknowledge that the terms of this Agreement apply to the Licensed Products so ordered by you from a QAS Business Partner. We are not responsible for:

- (a) the actions, statements or representations of QAS Business Partners;
- (b) any additional obligations they have to you;
- (c) any products or services which they supply to you under their arrangements with you; or
- (d) any failure or breach of agreement by any QAS Business Partner.

## 24 Assignment

You may not assign, novate, transfer, encumber, mortgage or license all or any part of this Agreement or any of your rights, benefits or obligations under it in any way without our prior written consent, which consent will not be unreasonably withheld in the event of an assignment or transfer of this Agreement in connection with your sale of all or substantially all of the business to which this Agreement relates. We may assign or



novate any of our rights, benefits or obligations under this Agreement to any other person. We will give you written notice of any such assignment or novation.

## 25 **Waiver**

Failure or neglect by either party to enforce at any time any of the provisions of this Agreement is not to be construed or deemed to be a waiver of that party's rights under this Agreement.

## 26 **Governing law and jurisdiction**

26.1 This Agreement shall be governed under the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded with respect to the Agreement and the relationship between the parties.

26.2 Both parties hereto consent to the exclusive jurisdiction of the state and federal courts of the United States located in Suffolk County, Massachusetts in connection with any controversy arising out of the operation of this Agreement and agree not to bring any action in any other jurisdiction.

## 27 **Confidentiality**

27.1 Where any Confidential Information is provided under this Agreement, the recipient agrees that:

- (a) they will not divulge such Confidential Information to any third party without the prior written consent of the disclosing party;
- (b) they will only divulge the Confidential Information to those employees who are directly involved in the purposes for which it was provided;
- (c) they will ensure that such employees are aware of and comply with the terms of this section; and
- (d) they will use such Confidential Information only for the purposes of this Agreement.

27.2 The provisions of section 27.1 will not apply to:

- (a) Information in the public domain otherwise than by breach of this Agreement
- (b) Information obtained from a third party who is free to divulge that information
- (c) Information demonstrated to be already within the knowledge of the recipient at the time of disclosure

## 28 **Survival of terms**

Notwithstanding any other provision in this Agreement, the following sections will expressly survive termination or expiry of this Agreement sections 4 (Ownership), 7.2 (Restrictions on Use), 14.2 (Warranties), 15 (Liability and indemnification), 16 (Termination), 18(Audit), 19 (Data Provider terms and conditions), 21 (Conflicting terms), 23 (QAS Business Partners), 24 (Assignment), 25 (Waiver), 26 (Governing law and jurisdiction), 27 (Confidentiality), 28 (Survival of terms), 29 (Notices), 31 (Interpretation and miscellaneous Terms) and 31 (Definitions).

## 29 **Notices**

Any notice to be given under this Agreement is to be delivered by first class mail, postage prepaid, hand delivery or facsimile (such facsimile to be confirmed by letter posted within one business day of the facsimile being sent) to the address of the other party as set out in the Order Confirmation (or such other address as may be notified). Such notice will be deemed to have been given or served upon receipt. If a notice is received by a party after 5pm (that party's time) or on a day when that party is not ordinarily open for business, the notice will be deemed to have been given at 9am on the next day when that party is ordinarily open for business.

## 30 **Interpretation and miscellaneous terms**

- (a) This Agreement contains the entire understanding between the parties as to the license of the Licensed Products. This Agreement supersedes any terms and conditions in any way related to the Licensed Products set forth in any purchase

order or other document, including any purchase order you may subsequently provide to us. Such other terms and conditions will be null and void.

- (b) Every provision of this Agreement is severable from the others and the severance of a provision will not affect any other provision.
- (c) A reference to a person includes a reference to a firm, corporation or other corporate body.
- (d) A reference to the singular includes the plural and vice versa. A reference to one gender includes a reference to the other genders.
- (e) A reference to any Act or regulation including a reference to that Act or regulation as amended, updated or consolidated from time to time and any replacement or substituted Act or regulation.
- (f) If any Licensed Product is acquired by or on behalf of a unit or agency of the United States government, the Licensed Product is provided as "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the government's rights with respect to such Licensed Product are limited by the terms of these License Terms and Conditions, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1(a), as applicable.
- (g) Neither you nor we (each a "Delayed Party") will be liable for any failure or delay in the Delayed Party's performance under this Agreement due to any cause beyond the Delayed Party's reasonable control, including acts of war, acts of God, earthquake, flood, fire, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of third party power or telecommunications networks.

## 31 **Definitions**

"**Additional Term**" means a twelve (12) month period.

"**Agreement**" means the terms and conditions of this document, the Order Confirmation, any Data Provider License and any document incorporated by specific reference including any terms and conditions located on Our Website.

"**Authorized Use**" means the number of Users, Clicks or Servers (as applicable) within your organization which are authorized to use the Licensed Products, such number to be specified in the Order Confirmation.

"**Click**" means the display of a record or part of a record in response to the entry of a query to the Licensed Products.

"**Confidential Information**" means any and all information relating to the affairs and/or business of either you or us and/or our respective customers, suppliers, clients or group companies in or on any medium or format, including trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, employee lists, customer lists, prospective customer lists, market opportunities and transactions. Without limiting the foregoing, our Confidential Information includes the Licensed Products.

"**Customer Data**" means any data or information provided by you in connection with this Agreement, including personal data such as an individual's contact details.

"**Data**" means the information or data provided as part of or in conjunction with the Licensed Programs, which information or data is ordered by you as specified in the Order Confirmation. The information or data includes any Data Updates.

"**Data Provider**" means the owner of the Data or the person who has the right to license or provide the Data for use by third parties.

"**Data Provider License**" means the specific terms and conditions of a Data Provider relating to the use of that Data Provider's Data, as set out on Our Website.

"**Data Update**" means an update to the Data supplied to you under this Agreement and included in the Initial License Fee and Renewal Fee.

"**Documentation**" means the user guide, operational manual and any other materials relating to the use or operation of the Licensed Programs as provided to you.

**"Effective Date"** means the date of commencement of your right to use the Licensed Products, as specified in the Order Confirmation.

**"Initial License Fee"** means the fee specified as such in the Order Confirmation.

**"Initial License Period"** means the period specified as such in the Order Confirmation and commencing on the Effective Date.

**"Licensed Products"** means the Licensed Programs, the Documentation and the Data.

**"Licensed Programs"** means the object or executable code of the "QAS" computer programs ordered by you and as specified in the Order Confirmation, including any New Release.

**"New Release"** means any maintenance release relating to the Licensed Programs including error fixes, minor upgrades and patches (but not including New Versions), which we make available to you under this Agreement or otherwise and which are included in the Initial License Fee and Renewal Fee;

**"New Version"** means a new version (as determined by us) of the Licensed Products (or part thereof) which we make available to you under this Agreement or otherwise but which is not included in the Initial License Fee or Renewal Fee.

**"Order Confirmation"** means the completed form entitled "Software Order Confirmation".

**"Our Website"** means [www.qas.com/legal](http://www.qas.com/legal) or such other URL as notified to you.

**"QAS Business Partner"** means an organization authorized by us to market certain of the Licensed Products.

**"Renewal Date"** means the date of expiry of the Initial License Period or of any subsequent Additional Term.

**"Renewal Fee"** means the fee specified as such in the Order Confirmation (as increased from time to time in accordance with this Agreement).

**"Server"** means a server version of the Licensed Programs.

**"Service Bureau"** means a business which processes data for or on behalf of third parties, including through the use of the Internet or other electronic based services.

**"Special Terms"** means any terms or conditions specified as such in the Order Confirmation.

**"Support Services Policy"** means our support services policy located on Our Website which sets out the terms and conditions on which we will provide technical support services to you.

**"User"** means a personal computer, workstation, terminal or peripheral device within your organization which can access either directly or indirectly any of the Licensed Programs or any part of the Data.

**"we"** or **"us"** or **"our"** means the QAS Ltd. Company specified in the Order Confirmation.

**"you"** or **"your"** means the customer specified in the Order Confirmation.





# **QAS Ltd. Technical Support**

## **QAS Worldwide Support Service Policy**

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**Change History**

<b>Date</b>	<b>Edition</b>
June 2001	2.0
March 2004	3.0
July 2005	4.0

This Policy will be reviewed from time to time.

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## 1. Purpose

This Worldwide Support Service Policy ("Policy") should be read in conjunction with the QAS Ltd. ("QAS") License Terms and Conditions ("The QAS License Terms") entered into between QAS and your organization. This Policy is the Support Service Policy referred to in the QAS License Terms. Its purpose is to describe our duties and responsibilities in providing you with Technical Support for the Licensed Products. It also lays out your duties and responsibilities. Certain of the terms used in this Policy are defined in the QAS License Terms.

This Policy does not apply to the support and maintenance of any bespoke work undertaken by us on your behalf ("Integration Services").

## 2. Technical support structure

Technical support is generally provided by the technical support department within the Country of Operation (ie the country in which the relevant system is located upon which the Licensed Products are installed).

In circumstances where the technical support department within the Country of Operation is unable to deal with the support call (or where there is no technical support department in your Country of Operation), we will, where possible, utilise our global operations to ensure that the support call is forwarded for resolution to the most appropriate technical support team either within or outside the Country of Operation.

In some cases, especially where the Licensed Products are initially purchased by you, in whole or in part, through third party channels ("QAS Business Partners"), Technical Support is provided by the QAS Business Partner. In such cases, your terms for Technical Support are those agreed between you and the QAS Business Partner.

## 3. Our obligation to provide technical support

Under the terms of this Policy and the QAS License Terms:

**We will provide technical support as specified in this Policy in response to your reasonable request (in accordance with the criteria below) during the hours of business specified against the Country of Operation in Appendix II. If you require technical support outside those normal hours of business, we are prepared to discuss with you charges and other terms for the provision of this additional technical support.**

- Your request for technical support will be treated as reasonable if:
  - the request is for operational advice by telephone, fax, e-mail, remote access (eg Webex) or the support website for the purpose of resolving your difficulties and queries in using the Licensed Products or relating to a fault which you believe is attributable to the Licensed Products originally supplied by us; and
  - the version of the Licensed Products for which you are requesting support shall not, at the time of your request, have been superseded by more than two New Versions which have been made available to you; and
  - the request conforms with the operating procedures and requirements set out in this Policy as updated from time to time; and
  - no Initial License Fees or Renewal Fees payable by you shall be overdue and unpaid at the time of the request.

### **We do not provide technical support for the following:**

- The systems (software or hardware) on which the Licensed Products are running.
- Any other software, hardware or data interacting with the Licensed Products.
- Any modifications made to the Licensed Products, other than those made by us.

## 4. Technical Support Calls

### 4.1 Description

A Technical Support Call is a request logged by you with our technical support department for operational advice for the purpose of resolving your difficulties and queries in using the Licensed Products.

### 4.2 Procedure

Where possible, all Technical Support Calls are taken through to resolution at the time they are placed. In circumstances where all technical support analysts are busy, Technical Support Calls will be placed in a queue and dealt with by the first available analyst.

Technical Support Call details are entered by us into a HelpDesk system that automatically generates a log number. You should ask for and note the log number for future reference.

### 4.3 Call Resolution

We will endeavour to resolve Technical Support Calls within 1 working day.

## 5. Error Correction Calls

### 5.1 Description

An Error Correction Call is a Call logged by you with our Technical Support Department relating to a fault which you believe is attributable to the Licensed Products originally supplied by us. Support for the purpose of Error Correction can only be provided if you have a support and maintenance agreement with the manufacturer(s) of the hardware and operating system that the Licensed Product is installed onto, and for any software applications that the Licensed Product interacts with.

### 5.2 Procedure

Error Correction Call details are entered by us into a HelpDesk system that automatically generates a log number. You should ask for and note the log number for future reference. At the same time, we shall prioritise the Error Correction Call with you as explained below.

### 5.3 Call prioritization

When logging an Error Correction Call, you must ensure that the Call is prioritized and that the priority is agreed with us at the time of placing the Error Correction Call. Call priorities have the following definitions:

Priority	Priority Description
Priority 1	A problem with the Licensed Product has caused your system to be unavailable to all users and the inability to use that system critically impacts your operations.
Priority 2	A problem with the Licensed Product has caused the Licensed Product to be unavailable to all users or a problem with the Licensed Product has caused a business critical component of your system to be unavailable to all users and the inability to use the Licensed Product or that component critically impacts your operations.
Priority 3	A problem with the Licensed Product has resulted in one particular individual being unable to carry out his or her operations.

## 5.4 Call resolution

If the Error Correction Call is capable of resolution by telephone, e-mail, fax or remote access (eg Webex), then the solution will be provided as follows:

Priority	Resolution
Priority 1	Within 4 working hours
Priority 2	Within 2 working days
Priority 3	Within 7 working days

If we determine that the Error Correction Call is not capable of resolution as above, we will agree with you a course of action to ensure that the Error Correction Call is resolved as quickly as possible. Possible courses of action include upgrading to a later release or version of the Licensed Product, installing the latest version of applicable data, work around or replacement software or media.

## 5.5 Site visit criteria

Where QAS has a technical support department in your Country of Operation, we will make a site visit within two working days of you requesting one, at no additional charge, if

- you notify us that there is a fault with one of the Licensed Products; and
- such fault can reasonably be attributed to such Licensed Products originally supplied by us; and
- telephone, email and remote access support has failed or is unlikely to rectify the fault so notified; and
- it is likely that the fault can be rectified by a site visit.

Where we make a site visit which does not satisfy such criteria or where your acts or omissions have caused any such failure or where such failure is due to third party software, hardware or data not being part of the Licensed Products, we shall have the right to levy a reasonable charge for the site visit, in accordance with our then current daily rates.

## 5.6 Escalation

When resolution of the Error Correction Call exceeds or is likely to exceed the time scales identified in this section, the Error Correction Call is escalated by us to the appropriate level within QAS. At each stage of the escalation process, you will be kept advised as to progress. Should you wish to escalate an Error Correction Call yourself, you may do so at any time by contacting the Support Services Manager.

## 6. Your responsibilities

**These responsibilities have been listed to help both you and ourselves to progress calls as effectively as possible. You should ensure that:**

- The Licensed Product has been installed and configured following the guidelines provided in the relevant Licensed Product documentation.
- Users are properly trained in the use of the Licensed Product and associated user applications (eg database) together with the operating system being used.
- A nominated user has been appointed to act as the contact for all communications relating to support between your organization and us.
- You are safely backing up, and are capable of restoring, configuration files, source code, executables and other variable data. Backups should be made prior to undertaking any changes to the system.
- For integrated product, you should ensure that source code, development documentation and trained staff are available to you so that you can implement any changes that may be required. Where an accreditation process is available, you should ensure that your integration meets the accreditation criteria.
- For integrated product, you should ensure that the Licensed Product has been integrated in such a way that its failure does not cause the application it has been integrated into to become inoperative.
- The latest version of all licensed data supplied by us has been installed and is operational.
- The version of the Licensed Product which you are using is not more than two versions old.
- Available New Releases for the Licensed Products have been implemented by you.
- New Versions and New Releases of the Licensed Products are tested to your satisfaction in a suitable test environment prior to being implemented in your 'live' or 'production' environment.
- All reasonable instructions provided by us are implemented.
- Appropriate equipment (such as modem, internet access, communication software and e-mail account) is available for remote access where this facility is requested by us.
- We have been provided with reasonable notice of any changes to your systems that may affect the provision of these services.

**At the time of placing calls, you should ensure that:**

- Details identified on the support call log form attached as Appendix I are available.
- The Licensed Product installation media are available.
- All required access rights and passwords are available and the location of the data and program files is known to the user placing the Technical Support or Error Correction Call.

**7. Appendix I - Support Call Log Form**

**QAS SUPPORT CALL LOG FORM v1.1**

Call Log Number \_\_\_\_\_ *Please request this from the Support Analyst.*

Date of Call \_\_\_\_\_ Time of Call \_\_\_\_\_ Call Priority \_\_\_\_\_

**Your Company and Contact Details**

Company Name \_\_\_\_\_ Account Ref \_\_\_\_\_

Your Name \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Email Address \_\_\_\_\_

**QAS Software Details (Use Help About or your system information screen)**

QAS Software \_\_\_\_\_

Version \_\_\_\_\_

Installation and latest Data Media Available? \_\_\_\_\_ PAF Version \_\_\_\_\_

Is Product Integrated? \_\_\_\_\_ Integrator \_\_\_\_\_

Application integrated into \_\_\_\_\_

**Workstation Details (from your IT department)**

Hardware Platform \_\_\_\_\_ Operating System \_\_\_\_\_

Additional Information \_\_\_\_\_

**Network/Server Details (from your IT department)**

Hardware Platform \_\_\_\_\_ Operating System \_\_\_\_\_

Additional Information \_\_\_\_\_

**Underlying Application' Details (from your IT department)** \_\_\_\_\_

**Support Call Details**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup>The Underlying Application is the software application the Licensed Product communicates with to exchange QAS data (eg addresses)

## 8. Appendix II - Support Locations and Hours of Business

*All times are local unless otherwise stated. Telephone, fax and email contact details may be found in the manuals or other delivery documentation accompanying the Licensed Products or as advised to you from time to time.*

<b>Country of Operation</b>	<b>Support Locations and Hours of Business</b>
Australia and Singapore	Between 08:30 and 18:00 Monday to Friday except public holidays in the State in which the relevant QAS office is located (including the afternoons of the working days preceding Christmas Day and New Years Day). Technical Support is provided from our offices in Sydney, New South Wales and Melbourne, Victoria.
United Kingdom, France and the Netherlands	Between 08:30 and 18:00 Monday to Friday except public holidays in England and Wales, and the afternoons of the working days preceding Christmas Day and New Years Day. Technical Support is provided from our offices in London.
USA and Canada	Technical Support is provided from our offices in Boston, Massachusetts, between 08:30 and 18:00 (Eastern Time) Monday to Friday except State of Massachusetts public holidays. Technical Support is provided from our offices in San Francisco, California, between 08:30 and 18:00 (Pacific Time) Monday to Friday except State of California public holidays.
All Others	Technical Support is provided, in English, from our offices in London during the United Kingdom hours of business.



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