

## **End user licensing agreement for QONDAC NETWORKS software programs**

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This End user licensing agreement – hereinafter referred to as the “**EULA**” – regulates all conditions related to the transfer of QONDAC NETWORKS software programs – contractual software programs are referred to hereinafter jointly as “**the software**” – by Dürkopp Adler GmbH, headquartered in Bielefeld – hereinafter referred to as “**Dürkopp Adler**” – to the company as the end user – the company is referred to hereinafter as the “**Licensee**” – and use of the software by said Licensee or its employees.

**PLEASE READ THIS EULA CAREFULLY. By downloading, installing, and/or using the software, you declare your agreement to be bound by the provisions of this EULA, effective for and against the company to which you belong. At the same time, you pledge that you are authorised to accept this EULA in the name of your company, or that it has been accepted by an authorised party.**

**If you do not agree to the above or are not authorised to make this pledge, you and your company are not entitled to install and use the software. If the software has already been installed, it must be deleted promptly and fully.**

Any conditions of the Licensee which contradict or deviate from this EULA only apply if Dürkopp Adler has recognised them in writing. There shall be no tacit recognition, and conditions shall not be considered recognised if Dürkopp Adler completes deliveries and/or services or receives payment unconditionally.

### **1. PROPERTIES OF THE SOFTWARE; INSTALLATION AND ACTIVATION**

- 1.1 The software documentation stipulates the agreed properties of the software. In case of doubt, the documentation is used to determine intended use. Dürkopp Adler shall not accept any guarantee for properties in any case.
- 1.2 Typically, software is activated for use by entering a licence key. If it is necessary to install the software for this purpose and the Licensee does this itself, only the associated instructions (including online instructions) shall be used to establish this process. The Licensee is responsible for ensuring the necessary system requirements are met to properly carry out the installation.

### **2. GRANTING, SCOPE AND LIMITS OF THE RIGHTS OF USE**

- 2.1 Dürkopp Adler hereby grants the Licensee a simple, non-exclusive, non-transferable right to the intended use of the software limited to the term in accordance with clause 6, in return for full and on-time payment of the agreed licensing fee, pursuant to this EULA for its own business purposes – hereinafter referred to as a “licence.”
- 2.2 If not otherwise expressly agreed in the licence certificate, the licence granted above is restricted to the intended use of the software on the number of machines indicated in the licence certificate (“included clients”). Additional clients can be licensed through a supplement to the licence certificate or with another licence certificate.
- 2.3 Apart from installing the software, loading the software to the working memory and downloading data from the running application, the Licensee is prohibited from any duplication of the software unless the intended use of the software requires such duplication. The Licensee may only make a backup copy if this is necessary to secure future intended use of the software.

Backup copies made by the Licensee must be clearly designated as such, and must contain the same copyright notices, trademarks and brands and/or ownership details such as serial numbers as the original. The sole use of backup copies is to secure against the risk of data

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loss.

- 2.4 If not expressly allowed under the above regulations or under the law, the Licensee is prohibited from any distribution, leasing, licensing, sublicensing, duplication, transmission – including in electronic media or databases – translation, change, decompilation, disassembling, all de-scrambling and all other processing, transmission or transfer of the software to third parties as a whole or in parts.
- 2.5 The Licensee shall not obtain any rights to the software beyond the licence granted under the above regulations. In particular, the licence for transferred software is restricted to the object code of the software, and for software as a service to use of the software over the internet. The Licensee shall have no claim to the source code of the software.
- 2.6 Clause 3 applies primarily to the open source components included in the software and/or connected to it.
- 2.7 The maintenance, servicing and/or further development of the software and the provision of support services related to the software to the Licensee by Dürkopp Adler shall in no case be an object of this EULA. The Licensee can order paid software support from Dürkopp Adler based on a separate agreement.

### **3. RIGHTS OF USE TO OPEN SOURCE COMPONENTS**

- 3.1 The software includes components of free software, open source software and/or comparable third party software components in addition to components and program modules developed by Dürkopp Adler – hereinafter referred to as “**open source components**” – and/or is connected to such open source components. Open source components are typically freely available components that the Licensee can also obtain directly and without the involvement of Dürkopp Adler through normal sales channels.
- 3.2 A list of the open source components relevant for the software can be requested from Dürkopp Adler. Only those rights of use which Dürkopp Adler has itself obtained in an authorised manner from the copyright holder for the respective open source components or other third parties shall be granted by Dürkopp Adler.

The extent of these rights of use and the other rights and obligations of the Licensee in relation to the respective open source components are described primarily in the licensing conditions applicable for them.

- 3.3 All other rights to the open source components remain the property of the respective copyright holder, unless the licensing conditions for the open source components in question stipulate otherwise.
- 3.4 Furthermore, clause 2 applies accordingly to rights of use for open source components.

### **4. ADDITIONAL LICENSING PROVISIONS FOR THIRD PARTY SOFTWARE PRODUCTS; SYSTEM SPECIFICATIONS**

- 4.1 In addition to this EULA, specific software licensing provisions may apply to individual software products. If not otherwise indicated in the software licensing conditions and/or this EULA, these licensing provisions shall apply in addition to and in extension of this EULA.
- 4.2 Any hardware requirements stipulated by Dürkopp Adler for use of the software and/or other system specifications must be strictly observed by the Licensee for the installation and use of the software.

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### 5. FEES AND PAYMENT METHODS; OFFSETTING AND RIGHT OF RETENTION

- 5.1 The fee to be paid by the Licensee for the transfer and/or use of the software is determined based on the licence certificate or the online order, or otherwise from the respective applicable Dürkopp Adler pricing list.
- 5.2 Agreed fees do not include applicable statutory VAT.
- 5.3 If not otherwise expressly agreed, the fee shall be invoiced in advance at the start of the current term (minimum term or current extension period).
- 5.4 Invoiced amounts shall be due upon receipt of the respective invoice by the Licensee and must be paid by it promptly and without deductions.
- 5.5 The Licensee may only offset claims that have been established in a court of law or are not disputed against claims of Dürkopp Adler. Rights of retention may only be exercised by the Licensee if they relate to claims based on the same contractual relationship.

### 6. LICENSE TERM

- 6.1 If the licence is expressly granted free of charge by Dürkopp Adler (e.g. as a non-binding test licence or for an expressly free trial period), the licence shall be valid for the agreed usage period (e.g. trial month). If there is no specified term of use, a usage term of four weeks shall be agreed. At the end of this usage term, the Licensee's right to use the software free of charge shall expire, and clause 6.4 shall apply accordingly.
- 6.2 If not expressly agreed in the licence certificate or otherwise, a charged licence shall be valid indefinitely, and at least for the duration of the minimum agreed term. If no minimum term is specified in the licence certificate, the parties agree to a minimum term of 12 months.  

At the end of the minimum term, the paid licence shall automatically be extended by an extension period corresponding to the duration of the (expired) minimum term, unless one party terminates the licence in writing, complying with a notice period of four weeks to the end of the minimum term or the current valid extension period.
- 6.3 The rights of both parties to termination without notice for good cause shall remain unaffected. Dürkopp Adler can, in particular, terminate the EULA and the licence granted herein for good cause without notice if the Licensee
  - a) violates the regulations of the EULA, in particular clause 2;
  - b) if a significant change occurs in the ownership or management of the Licensee, unless this does not impact the concerns of Dürkopp Adler; or if
  - c) insolvency proceedings or comparable proceedings are opened against the assets of the Licensee or a motion is filed for such proceedings.
- 6.4 When the termination comes into effect, the Licensee shall promptly and completely delete all installed software components and all backup copies made from its systems or, if this is not possible, shall cease use promptly and permanently, and shall provide written verification of the deletion or cessation of use to Dürkopp Adler upon request. When the termination becomes effective, Dürkopp Adler is also entitled to deactivate any activated software.
- 6.5 Fees paid in advance shall not be reimbursed, unless the Licensee was entitled to terminate the Agreement without notice.

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### 7. SOFTWARE UPDATES

- 7.1 The Licensee is hereby informed that the software may be subject to adjustments, further developments and/or other updates. Dürkopp Adler is entitled to create such software updates at its own discretion, and to decide whether the updates are offered to the Licensee and, if so, under what conditions. The Licensee shall have no claim to receive updates, unless otherwise expressly agreed or required by law.
- 7.2 If Dürkopp Adler offers the Licensee updates (such as patches or bug fixes) free of charge (for instance for download), the Licensee is obligated to adopt these (e.g. through download and/or installation) if this is not unreasonable for the Licensee.

**The Licensee shall bear all risks and other negative consequences it may suffer due to failure to adopt reasonable updates offered to it.**

### B. REQUESTS FOR INFORMATION FROM DÜRKOPP ADLER; CONTROLLING USE, PROTECTIVE MEASURES

- 8.1 Upon request by Dürkopp Adler, the Licensee shall promptly provide written information (to a reasonable extent) regarding whether the software is being used according to the EULA. This notification must include all information necessary for a review.

The Licensee shall provide Dürkopp Adler access to its relevant records and systems as necessary to review its use according to the EULA. Dürkopp Adler shall treat all information received in this respect as confidential and shall only make it accessible to third parties as necessary to safeguard the rights of Dürkopp Adler.

- 8.2 Dürkopp Adler is entitled to integrate appropriate technical measures into the software to determine the validity of licences, to review contractual use of the software and to protect the software against misuse.
- 8.3 **Any change, deactivation, bypassing or otherwise influencing the measures indicated in clause 8.2 by the Licensee to the detriment of Dürkopp Adler is strictly prohibited and will immediately void the licence.** The Licensee shall remain liable to pay the agreed fee in this case until the end of the contract and shall be liable to Dürkopp Adler for all damages and other disadvantages.

### 9. REMOTE ACCESS TO LICENSEE MACHINES, INCIDENT REPORTS

- 9.1 Installation and certain software functions require access by Dürkopp Adler through a telecommunication connection – hereinafter referred to as “**remote access**” – to the servers and/or machines of the Licensee, or such remote access is included in other agreements between the parties. Dürkopp Adler can use the remote access to review, monitor, maintain or service the machines and/or undertake other work agreed to with the Licensee or which is required.
- 9.2 Remote access shall be obtained and used by Dürkopp Adler primarily according to the agreements concluded between the parties (such as the maintenance agreement), and otherwise according to the regulations of this clause 9.
- 9.3 Remote access shall be obtained through a secure telecommunication connection created by the Licensee (temporarily or permanently). The Licensee must obtain and maintain the necessary technical requirements for this purpose on the Licensee's pages which are outside the scope of Dürkopp Adler's operations (such as providing a broadband connection or ISDN connection).

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- 9.4 Dürkopp Adler shall not obtain any remote access if and insofar as the Licensee blocks remote access to the machine(s) in question or prohibits remote access.

In this case, the Licensee shall bear the risk and consequences for the lack of a remote access. If the remote access is required for Dürkopp Adler to provide agreed services, it may be necessary to adjust the agreement in this respect. Until such an agreement is reached, Dürkopp Adler will not be obligated to provide services.

- 9.5 Depending on current model specifications and/or the Licensee's machine configuration, machines may transmit automated error messages or other incident-specific or relevant company information – hereinafter referred to as “**incident messages**” – to Dürkopp Adler. Dürkopp Adler is entitled to view these incident messages. Unless expressly agreed with the Licensee, however, Dürkopp Adler is not obligated to do so. Dürkopp Adler shall treat incident messages it has viewed as confidential.

### 10. CONFIDENTIALITY, DATA PROTECTION AND DATA SECURITY

- 10.1 The parties are obligated to treat all operating and trade secrets and other technical and organisational information which they obtain in the course of carrying out the Agreement as confidential – hereinafter referred to as “**confidential information**”. Information which is published publicly by the party to which it relates or which is general knowledge is not considered confidential information.
- 10.2 If Dürkopp Adler uses third parties to provide services in relation to the contractual relationship, Dürkopp Adler is entitled to disclose confidential information and data of the Licensee to these third parties, if this is necessary to provide its contractual services and allowed by law. Dürkopp Adler shall obligate the third parties to treat the confidential information and data as confidential.
- 10.3 Dürkopp Adler is furthermore entitled to disclose confidential information and data of the Licensee if Dürkopp Adler is required to do so by law and/or by official order, and furthermore if it is disclosed to third parties obligated to confidentiality by their professional standards.
- 10.4 Each party shall be solely responsible within its sphere of action for complying with applicable data privacy law regulations.

### 11. USE OF NON PERSONAL DATA

- 11.1 If Dürkopp Adler obtains non-personal data of the Licensee (such as machine properties, performance parameters, other purely technical information) in the course of remote access, in the course of software use by the Licensee or otherwise in the course of carrying out the contract, Dürkopp Adler may process and use this data for an unlimited term (for instance to further develop products and improve its range of services).
- 11.2 The above clause 11.1 shall apply accordingly for data anonymised or pseudonymised by Dürkopp Adler after receipt such that it is not personal data.

### 12. LIABILITY AND LIMITATION OF LIABILITY

- 12.1 Dürkopp Adler shall only be liable if it is culpable or if its legal representatives, executive employees and other agents are liable, in accordance with the following regulations.
- 12.2 If the Licensee suffers damages due to the use of a free licensed software (such as a demo version), Dürkopp Adler shall be liable only if the damages were incurred by the Licensee through contractual use of the software, and only in case of intentional action (including mali-

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cious intent) or gross negligence by Dürkopp Adler or its legal representatives, executive employees or agents. Any other liability by Dürkopp Adler shall be excluded, if not otherwise indicated in clause 12.4.

- 12.3 Dürkopp Adler shall be liable without restriction for damages related to charged licensed software if they were caused intentionally or through gross negligence by Dürkopp Adler or its legal representatives, executive employees or other agents.

In the case of slightly negligent violations of an obligation, the fulfilment of which the Licensee should be able to trust and which facilitate the proper completion of the Agreement (called cardinal obligations), the liability of Dürkopp Adler shall be restricted to those damages that should typically be expected to occur in the service relationship in question (called foreseeable damages typical for the contract). Any other liability for damages caused through slight negligence shall be excluded.

In case of liability under the above paragraph, the liability of Dürkopp Adler shall be limited to 100,000 EUR per calendar year.

- 12.4 Liability for malicious intent, personal injury, warranties for the properties of a delivered object and liability under the Product Liability Act shall remain unaffected by the above regulations.
- 12.5 Dürkopp Adler shall not be liable for restoring data, unless Dürkopp Adler caused its loss or destruction in an intentional or grossly negligent manner, and the Licensee has ensured that this data can be reconstructed with reasonable effort from material saved in a machinereadable format. The Licensee is aware that it must regularly back up its data as part of its obligation to minimise damages, and that it must take all other reasonable safety measures in case of a suspected software error.

### 13. WARRANTIES AND GUARANTEED PROPERTIES

- 13.1 Any warranties provided or properties guaranteed must be expressly provided or guaranteed by Dürkopp Adler, must be designated as such and shall require the written form to be valid.
- 13.2 Information in catalogues, brochures, printed materials, advertisements and documentation shall in no case represent a warranty or a guarantee of properties, independent of its format.

### 14. THIRD PARTY RIGHTS

- 14.1 The Licensee shall inform Dürkopp Adler promptly and in writing of all claims asserted against it due to (alleged) violations of property rights by the software. Dürkopp Adler shall decide how to proceed against the claimant at its own discretion. The Licensee shall support Dürkopp Adler in doing so to a reasonable extent upon request. If the Licensee ceases its use of the software with activities to reduce damages, it is obligated to inform third parties that its cessation of use is not considered a recognition that it has violated property rights.
- 14.2 If the software violates third party property rights, Dürkopp Adler shall either offer alternative products to the Licensee with a comparable scope of services, provide it a right of use to the software or change the software so that it does not violate any third party property rights, at its discretion.

If Dürkopp Adler is not able to carry out any of these measures under reasonable conditions, for instance because the relationship between the costs and fee for use/provision of the software is not reasonable, the Licensee shall be entitled to reduce the agreed fee to a reasonable extent or withdraw from the Agreement at its discretion.

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Dürkopp Adler shall only be liable under clause 12.

- 14.3 Claims of the Licensee against Dürkopp Adler are excluded if the Licensee is responsible for the violation of protected rights. This applies in particular if the violation of property rights relates to the Licensee's requirements, for instance in relation to specifications, design or documentation or to changes to the software by the Licensee or third parties, to use of the software with third party products or to use of the software which was not foreseen by Dürkopp Adler.
- 14.4 If there are other legal defects, the regulations on liability and limitation of liability under clause 12 apply accordingly.
- 14.5 Claims by the Licensee against Dürkopp Adler beyond the regulations of clause 12 due to a legal defect are excluded in every case.

### **16. SUPPORT**

- 16.1 If the Licensee books charged support for the software from Dürkopp Adler and if not otherwise agreed in the relevant support agreement, the Licensee shall receive access to the supplementary deliveries created by Dürkopp Adler for the software (such as patches, bug fixes and updates) during the term of the support agreement.
- 16.2 Typically, Dürkopp Adler shall make such supplementary deliveries available to the Licensee through a download link. The Licensee is responsible for downloading and installing the supplementary deliveries itself.

### **17. FINAL PROVISIONS**

- 17.1 Amendments and supplements to this EULA shall require the written form. This also applies to revocations, changes or waivers of this written form requirement.
- 17.2 The place of fulfilment for deliveries is the location from which Dürkopp Adler delivers its products. The place of fulfilment for payments is Bielefeld.
- 17.3 The law of the Federal Republic of Germany applies exclusively to this EULA, with the exception of conflict-of-law rules. The UN Sales Convention (CISG) is expressly excluded.
- 17.4 The place of jurisdiction for all disputes arising from or in conjunction with this EULA is the headquarters of Dürkopp Adler. However, Dürkopp Adler is also entitled to bring claims at the headquarters of the Licensee.
- 17.5 If a provision of this EULA is or becomes invalid, this shall not affect the validity of the other provisions.

