



QWARE Ltd Master Services Agreement For Sample Company Limited

Agreement Number: SAM28241

Document Version 1.2

This Agreement is dated 06/09/2021

PARTIES

- (1) QWARE Limited (Company Number 13334085) whose registered office is at: Ground Floor Cromwell House, 15 Andover Road, Winchester, England, SO23 7BT (**QWARE**)
- (2) SAMPLE COMPANY LIMITED whose registered office is at 123 Sample Street Sample Town Sampleshire SA01 01SA United Kingdom (**Customer**)

BACKGROUND

(A) QWARE is in the business of providing the Available Services,

and

(B) The Customer wishes to obtain the Available Services on the terms set out in this agreement.

1. DEFINITIONS AND INTERPRETATIONS

The following **Definitions** apply in this agreement:

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Applicable Laws: all applicable laws, statutes, regulation and codes from time to time in force.

Available Services: the project based professional services as set out in *Schedule 2*.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.30 pm London, England, local time on any Business Day.

Charges: the Statement of Work Charges.

Confidential Information: all proprietary information of a party ("Disclosing Party") disclosed, orally or in writing, to the other party ("Receiving Party") that is designated or marked as confidential at the time of disclosure and/or reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall include, without limitation, the terms and conditions of this agreement (including pricing and other terms reflected in all Statements of Work and other orders), the data, business plans, technology and technical information, financial information, business strategies, practices, procedures, methodologies, know-how, product designs, and business processes of each party. Confidential Information shall not include any information that is or becomes generally known to the public without breach of any obligation by the Receiving Party or was known to the Receiving Party prior to its disclosure or is rightfully received from a third party.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and expression **Change of Control** shall be construed accordingly.

Customer: The identified legal entity or group of legal entities related as wholly owned Parent/Subsidiaries

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Statement of Work.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to QWARE in connection with the Works.

Data Protection Legislation: all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms "Personal Data", "Data Controller", "Data Processor" and "process" (in the context of usage of Personal Data shall have the meanings given to them in the applicable Data Protection Legislation.

Deliverables: the output of the Works provided by QWARE to the Customer as specified in a Statement of Work (excludes QWARE's Equipment and any Software provided under License).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Harassment: is when someone behaves in a way which offends or causes distress or intimidation. This could be abusive comments or jokes, graffiti or insulting gestures. Harassment is a form of discrimination under the UK Equality Act 2010.

Milestone: a date by which a part or all of the Works is to be completed, as set out in a Statement of Work.

Month: means a calendar month.

Project Services: the delivery of one or more of the Available Services.

QWARE Policies and Procedures: QWARE's business policies and procedures are published on the QWARE site at <https://www.QWARECloud.com/Legal.html>

QWARE's Equipment: any equipment, including tools, systems, cabling or facilities, loaned or provided by QWARE to the Customer and/or used directly or indirectly in the supply of the Works, including any such items specified in a Statement of Work but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

QWARE Tools: any specific know-how, information, software or other materials, which have been developed by the QWARE in the course of its business which are used in the supply of the Deliverables, the Works and/or the Services

Reference Charges: the standard charges for the Available Services as set out in *Schedule 2*.

Services: Project Services.

Software: means any readily available proprietary software application (including as applicable Software as a Service) whether supplied to the Customer by QWARE, an independent vendor or other third party.

Software Licence: means the customer rights to use and distribute the Software issued by QWARE, vendor or third-party, may also be referred to as the End User Licence Agreement (EULA).

Statement of Work Charges: the sums payable for the Works as set out in a Statement of Work.

Statement of Work: document detailing the Project Services, Deliverables, Charges, associated timescales, and Party responsibilities agreed in accordance with Clause 3, to be provided by QWARE.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

Works: the delivery of the Available Services under a Statement of Work.

Clause, Schedule and paragraph headings shall not affect the following **Interpretations** of this agreement:

- 1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to any other gender.
- 1.6 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes email.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

- 2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue unless terminated earlier in accordance with Clause 12, or until either party gives to the other party written notice to terminate pursuant to Clause 12.1.
- 2.2 If there are no uncompleted Statements of Work or Support Order Forms for Support Services as at the date notice to terminate is served under Clause 12.1, such notice shall terminate this agreement with immediate effect.
- 2.3 The parties shall not enter into any further Statements of Work or Support Order Forms for Support Services after the date on which notice to terminate is served under Clause 12.1.

3. PROJECT SERVICES

- 3.1 A Statement of Work shall be raised when the Customer requests QWARE to provide any or all the Available Services.
- 3.2 The Statement of Work may also include details and costs of any required Software.
- 3.3 The Customer will provide QWARE with as much information as QWARE reasonably requests to prepare a Statement of Work. If QWARE declines to provide the Available Services, it shall inform the Customer as soon as reasonably practicable.
- 3.4 The Statement of Work Charges shall be calculated in accordance with the Reference Charges.
- 3.5 In relation to each Statement of Work, QWARE shall:
 - 3.5.1 use reasonable endeavours to manage and complete the Works, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects;
 - 3.5.2 appoint a manager for the Works to be performed under each Statement of Work, such person as identified in the Statement of Work.
 - 3.5.3 QWARE shall use all reasonable endeavours to ensure that the same person acts as QWARE's manager throughout the term of the relevant Statement of Work but may replace that person from time to time where reasonably necessary in the interests of QWARE's business; and
 - 3.5.4 warrants a performance standard no greater than reasonable care and skill.
- 3.6 In relation to each Statement of Work, the Customer shall:
 - 3.6.1 co-operate with QWARE in all matters relating to the Works;
 - 3.6.2 appoint a manager in respect of the Works to be performed, such person as identified in the Statement of Work;
 - 3.6.3 provide, for QWARE, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by QWARE including any such access as is specified in a Statement of Work;
 - 3.6.4 provide to QWARE in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Statement of Work or otherwise reasonably required by QWARE in connection with the Works and ensure that they are accurate and complete in all material respects;
 - 3.6.5 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works;
 - 3.6.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable QWARE to provide the Works, including in relation to the installation of QWARE's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Works are to start;
 - 3.6.7 allow an extension of time to QWARE to perform its obligations under each Statement of Works if it is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees without prejudice to any other right or remedy it may have; and

- 3.6.8 grant to QWARE the right to make public announcements for the purposes of marketing, concerning the provision by QWARE to the Customer of the Available Services and thereby the right to use for that purpose the name and any trade mark of the Customer to that end with the express written consent being obtained by the Customer in advance of any announcement.
- 3.7 Acceptance criteria for all Works and Deliverables shall be set out within the Statement of Work and the Customer shall accept Deliverables on meeting those criteria. Whether written notice of acceptance is provided or not, use of a Deliverable within the Customer's live/production business operations shall be determined as acceptance.
- 3.8 A period of 30 days following the date of delivery of each Deliverable shall be allowed during which time the Customer should notify QWARE in writing of any fault and/or defect discovered and QWARE shall fix that fault and/or defect using reasonable efforts. In the event that QWARE cannot fix the fault and/or defect within 30 days of the defect notification to QWARE or is otherwise unable to effect a suitable workaround and, if the fault and/or defect is of a material nature the Customer shall acting reasonably be entitled to reject the Deliverables and terminate the relevant Statement of Work or the affected part of it and receive a full refund of all sums paid in respect of the rejected Deliverables and any other Deliverables that are unable to be used without the rejected Deliverables.
- 3.9 Defects or faults notified to QWARE after 30 days from delivery shall be addressed via Support Services.
- 3.10 In accordance with Clause 4, QWARE shall invoice the Customer for the Charges relevant to each Statement of Work at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals or Milestones are so specified, QWARE shall invoice the Customer at the end of each month for Works performed during that month.
- 3.11 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

4. CHARGES AND PAYMENT

- 4.1 In consideration of the provision of the Project Services by QWARE, the Customer shall pay the Charges either directly or if so specified in a Statement of Work indirectly through a third party.
- 4.2 The Charges exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals who QWARE engages in connection with the Works.
- 4.3 The Charges will be invoiced as per the billing schedule detailed in the Statement of Work.
- 4.4 Expenses will be payable by the Customer monthly in arrears on submission of an appropriate invoice.
- 4.5 QWARE may review and increase the Reference Charges and any other services (non licence) related Charges not calculated in accordance with the Reference Charges annually. The customer will receive 60 Days notice of any changes.
- 4.6 Any increase in the Reference Charges:
- 4.6.1 shall not affect the Charges of Statements of Work in force at the date the increase takes effect; and
- 4.6.2 will be used in the calculation of the Charges for Statements of Work entered into after the date the increase takes effect.
- 4.7 QWARE may charge a cancellation fee on any Charges, agreed and set out on a Statement of Work calculated as either:
- 4.7.1 50% of the agreed Charges if cancellation is within 10 working days of the agreed date of service delivery; or
- 4.7.2 100% of the agreed Charges if cancellation is within 3 working days of the agreed date of service delivery.
- 4.8 The Customer shall pay each invoice submitted to it by QWARE on the terms agreed in the Statement of Work.
- 4.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay QWARE any sum due under this agreement on the due date:
- 4.9.1 the Customer shall pay interest, accrued daily until actual payment, on the overdue amount at the rate of 2% per annum above Lloyds Bank's base rate from time to time; and

4.9.2 QWARE may suspend or abort part or all of the Works until payment has been made in full including pro rata charges for Works undertaken whether or not completed and any interest accrued under clause 4.9.1.

4.10 All sums payable to QWARE under this agreement:

4.10.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

4.10.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) unless a bona fide dispute has been raised.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 In relation to the Deliverables:

5.1.1 QWARE, including any sub-contractors, and its licensors shall retain ownership of all pre-existing IPR in the Deliverables, and QWARE Tools, but excluding the Customer Materials;

5.1.2 QWARE shall also retain any IPR relating to designs, processes, databases, coding inventions or any similar component whether created or evolved as part of the Deliverables;

5.1.3 QWARE grants the Customer, worldwide, non-exclusive, royalty-free perpetual rights to use, copy and modify the Deliverables (excluding the Customer Materials) for the purpose of its internal use only; and

5.1.4 the Customer may, only with the written consent of QWARE, sub-licence the rights granted in Clause 5.1.3 to its Affiliates and/or customers.

5.2 QWARE warrants:

5.2.1 that the receipt, or use of the Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights of any third party;

5.2.2 that subject to Clause 10.3, keep the Customer indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of or in connection with, the receipt, or use of the Deliverables; and

5.2.3 the Customer shall, however, have no claim under the indemnity at Clause 5.2.2 to the extent the infringement arises solely from:

5.2.3.1 the use of Customer Materials in the development of, or the inclusion of the Customer Materials in the Deliverables;

5.2.3.2 any modification of the Deliverables, other than by or on behalf of QWARE.

5.3 The Customer warrants:

5.3.1 that the receipt and use in the performance of this agreement by QWARE, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

5.3.2 it shall keep QWARE indemnified in full against any direct costs, expenses, damages including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by QWARE as a result of or in connection with any claim brought against QWARE, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Right arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

5.4 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this Clause 5, the Indemnified Party shall:

5.4.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause 5.2 or Clause 5.3 (as applicable) (**IPRs Claim**);

- 5.4.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- 5.4.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- 5.4.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

6. COMPLIANCE WITH LAWS AND POLICIES

- 6.1 In performing their obligations under this agreement, QWARE and the Customer shall comply with:
 - 6.1.1 the Applicable Laws; and
 - 6.1.2 QWARE Policies and Procedures, provided that QWARE shall give the Customer not less than 30 days notice of any change to such policies.
- 6.2 Changes to the Works required as a result of changes to the Applicable Laws or QWARE Policies and Procedures shall be agreed via a separate Statement of Work.
- 6.3 In relation to the Software, the customer shall procure and maintain, either through QWARE, vendor or third party all required Software Licences.
- 6.4 Changes to the Deliverable required as a result of changes to the Applicable Laws or QGate Policies and Procedures shall be carried out via a separate Statement of Work.

7. DATA PROTECTION AND DATA PROCESSING

- 7.1 For the purposes of this Agreement, both parties may receive Personal Data. Where the parties receive Personal Data as Data Controllers each party agrees to comply with the current Data Protection Legislation.
- 7.2 Throughout the commercial relationship of the parties, each party will be processing the Personal Data of the other's employees in order to facilitate contact and co-operation between the parties.
- 7.3 Notwithstanding the Personal Data described in Clause 7.2, the Customer will, acting as Data Controller be passing Personal Data to QWARE as Data Processor pursuant to this Agreement.
- 7.4 Where QWARE receives Personal Data as a Data Processor, QWARE shall:
 - 7.4.1 act solely on the instructions of the Customer in relation to the processing of that Personal Data. In the event that a legal requirement prevents QWARE from complying with such instructions QWARE shall, unless such legal requirement prohibits it from doing so, inform the Customer of the relevant legal requirement before carrying out the relevant processing activities provided that to the maximum extent permitted by mandatory law, QWARE shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities arising from or in connection with any processing in accordance with the Customer's processing instructions following the Customer's receipt of that information;
 - 7.4.2 at all times, ensure that the necessary technical and organisational measures are in place to prevent unauthorised and unlawful processing or disclosure of such Personal Data and such measures shall include taking reasonable steps to ensure the reliability of any of its staff who may have access to Personal Data and ensuring that such staff are subject to appropriate confidentiality undertakings. QWARE shall, save where prohibited by law and as soon as reasonably practical, notify the other party of any legal obligation which requires the QWARE to disclose the Personal Data to a third party;
 - 7.4.3 not transfer the Personal Data outside of the European Economic Area (as such term is commonly understood) or to any third party without the Customer's written consent;

- 7.4.4 send to the other party any communications received from individuals in relation to their Personal Data as soon as reasonably practicable. QWARE shall provide reasonable co-operation to the other party in relation to any individuals exercising their rights under the Data Protection Legislation;
 - 7.4.5 give the Customer reasonable assistance in relation to its compliance with Data Protection Legislation;
 - 7.4.6 take reasonable steps to ensure the confidentiality, integrity, availability and resilience of processing systems and services associated with the processing of Personal Data;
 - 7.4.7 co-operate with and provide such information and access to any facilities, premises or equipment from or on which Personal Data is, has been, or is to be processed pursuant to this Agreement (including any such facilities, premises or equipment used by staff and/or sub-contractors) as the other party may reasonably require enabling it to monitor compliance by QWARE with the obligations in this Agreement;
 - 7.4.8 notify the Customer without undue delay and assist the Customer with any investigation into and remediation of an actual or suspected Personal Data Breach. QWARE shall also provide the Customer with reasonable assistance with any notifications made to relevant authorities and/or individuals in relation to a Personal Data Breach;
 - 7.4.9 not subcontract any of its obligations under this Agreement regarding the processing of Personal Data to a third party (a "Sub-Processor") without the prior written consent of the Customer. QWARE shall be liable for the acts and omissions of the Sub-Processor as if they were the acts or omissions of the QWARE itself and QWARE shall ensure that there is a written contract executed between QWARE and the Sub-Processor that contains equivalent protections for the Personal Data as are set out in this Agreement;
 - 7.4.10 immediately cease processing the Personal Data and immediately supply any Personal Data to the other party or delete the Personal Data in accordance with the other party's instructions;
 - 7.4.11 submit to audits and inspections carried out directly upon it by a supervisory authority or the Customer (no more often than once every twelve (12) months or as the Customer reasonably believes necessary, based on evidence and providing such evidence in notification to the Processor), and co-operate in any audits and inspections carried out upon the Customer; and
 - 7.4.12 inform the Customer immediately of any requests made of it that would involve infringing Data Protection Legislation.
- 7.5 Where QWARE receives Personal Data as a Data Processor the Customer warrants, represents and undertakes, that:
- 7.5.1 all data sourced by the Customer for use in connection with the Services, prior to such data being provided to or accessed by QWARE for the performance of the Services under this Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Legislation; and
 - 7.5.2 all instructions given by it to QWARE in respect of Personal Data shall at all times be in accordance with Data Protection Laws.
- 7.6 The Data Processor shall maintain and keep up to date records detailing the location of all Customer data (including Personal Data) together with details of any third parties with whom QWARE has shared any Customer data.
- 7.7 Nothing in this agreement relieves QWARE of its own direct obligations under Data Protection Legislation and QWARE shall comply with the following additional obligations:
- 7.7.1 to co-operate with supervisory authorities as reasonably required;
 - 7.7.2 to keep records of its own processing activities;
 - 7.7.3 to employ a Data Protection Officer (if applicable); and
 - 7.7.4 the schedule of processing activities is detailed in Schedule 1.

- 7.8 QWARE shall (and shall ensure that all persons acting on its behalf and all QWARE Personnel shall), promptly following the Customer's written request, either securely delete or securely return all Personal Data to the Customer in such form as the Customer reasonably requests.
- 7.9 QWARE shall (and shall ensure that all persons acting on its behalf and all QWARE Personnel shall), following written confirmation by the Customer that it has received a functional copy of all Personal Data, securely delete all the Personal Data promptly after the earlier of:
- 7.9.1 the end of the provision of the relevant Services or Support related to processing of such Personal Data;
- or
- 7.9.2 once processing by QWARE of any Personal Data is no longer required for the purpose of QWARE's performance of its relevant obligations under this Agreement, (unless storage of any data is required by Applicable Law and, if so, QWARE shall inform the Customer of any such requirement).

8. NON-SOLICITATION

- 8.1 Neither party shall without the prior written consent of the other party, solicit or entice away from the other party, any person who is, or has been engaged as an employee, consultant or subcontractor by the other party in the provision of the Works.
- 8.2 This non-solicitation clause will be effective from the date on which any Works commences, up to the date 12 months after the completion of the Works.

9. TREATMENT OF EMPLOYEES

- 9.1 QGate has an internal policy against Harassment. Equally, Harassment of employees by any external party such as customers, suppliers, partners will not be tolerated.
- 9.1.1 Should such activity against any employee be reported and not immediately resolved, QGate reserve the right to suspend further provision under this agreement; and
- 9.1.2 Should resolution not be forthcoming within a reasonable period QGate reserve the right to terminate the agreement without any liability.

10. CONFIDENTIALITY

- 10.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 10.2.
- 10.2 Each party may disclose the other party's confidential information to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 10.4 QWARE acknowledges if the Customer is a Public Authority it will have the need to comply with Government requests for information such as but not limited to the Government Transparency Code. QWARE will not restrict any such information under this clause.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in this agreement shall limit or exclude QWARE's liability for:
- 11.1.1 death or personal injury caused by its negligence;
- 11.1.2 fraud or fraudulent misrepresentation; or
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

- 11.2 Subject to Clause 12.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- 11.2.1 loss of profits;
 - 11.2.2 loss of sales or business;
 - 11.2.3 loss of agreements or contracts;
 - 11.2.4 loss of anticipated savings;
 - 11.2.5 loss of or damage to goodwill;
 - 11.2.6 loss of use or corruption of software, data or information; and
 - 11.2.7 any indirect or consequential loss.
- 11.3 Subject to Clause 11.1, each party's total liability to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the lesser of £1,000,000 and seventy five per cent (75%) of the average annual charges (calculated by reference to the charges in successive 12-month periods from the date of this agreement) paid by the Customer under this agreement.
- 11.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

12. TERMINATION

- 12.1 Either party may terminate this agreement in writing with a minimum of 30 days notice to the other.
- 12.2 This agreement shall expire on the completion of all Statements of Work and Support Services entered into before the date on which it is served, unless otherwise agreed.
- 12.3 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 12.3.1 the other party commits a material breach of any term of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 12.3.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 12.3.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 12.3.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement withy of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.3.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - 12.3.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 12.3.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - 12.3.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 12.3.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 12.3 .3 to Clause 12.3 .9 (inclusive); or
 - 12.3.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.4 For the purposes of Clause 12.3 .1 **material breach** means a breach (including an anticipatory breach) that is so serious in the widest sense of having a significant effect on the benefit which the terminating party would otherwise derive from a substantial proportion of this agreement but for the breach.
- 12.5 Without affecting any other right or remedy available to it, QWARE may terminate this agreement with immediate effect by giving written notice to the Customer if:
- 12.5.1 the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
 - 12.5.2 there is a change of control of the Customer.
- 12.6 Consequences of Termination:
- 12.6.1 all existing Statements of Work and Support Services shall terminate automatically except in the case of termination for convenience under clause 12.1 when the Statements of Work and Support Services shall continue for the full term of those Services;
 - 12.6.2 the Customer shall immediately pay to QWARE all QWARE's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, QWARE may submit an invoice, which shall be payable immediately on receipt;
 - 12.6.3 the Customer shall, within 30 days, return all QWARE's Equipment. If the Customer fails to do so, then QWARE may enter the Customer's premises and take possession of QWARE's Equipment. Until QWARE's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;
 - 12.6.4 QWARE shall on request return any of the Customer Materials still in its possession; and
 - 12.6.5 the following clauses shall continue in force: Clause 1 (Definitions and Interpretations), Clause 5 (Intellectual Property Rights), Clause 8 (Non-Solicitation), Clause 10 (Confidentiality), Clause 11 (Limitation of liability), Clause 12.6 (Consequences of termination), Clause 15 (Waiver), Clause 17 (Severance), Clause 23 (Dispute resolution), Clause 24 (Governing law) and Clause 25 (Jurisdiction).
- 12.7 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. FORCE MAJEURE

- 13.1 A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is:
- 13.1.1 beyond the reasonable control of a party;
 - 13.1.2 materially affects the performance of any of its obligations under this agreement; and
 - 13.1.3 could not reasonably have been foreseen or provided against.

14. VARIATION

14.1 Subject to Clause 3.4, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. WAIVER

15.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

15.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16. RIGHTS AND REMEDIES

16.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. SEVERANCE

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. ENTIRE AGREEMENT

18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent (but not negligent) misrepresentation based on any statement in this agreement

19. NO PARTNERSHIP OR AGENCY

19.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20. THIRD PARTY RIGHTS

20.1 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

21. NOTICES

21.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

21.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

21.1.2 sent by email to the addresses specified in the latest dated Statement of Works.

21.2 Any notice shall be deemed to have been received

21.2.1 if delivered by hand, with signature on delivery receipt:

21.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

21.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.

21.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. COUNTERPARTS

22.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

22.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

22.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

23. DISPUTE RESOLUTION

23.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

23.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the signatory to this agreement for the Customer and the signatory to this agreement for QWARE shall attempt in good faith to resolve the Dispute;

23.1.2 if the signatory to this agreement of the Customer and/or the signatory of QWARE are for any reason unavailable or unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the CEO of the Customer and CEO of QWARE who shall attempt in good faith to resolve it; and

23.1.3 if the CEO of the Customer and CEO of QWARE are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

23.2 Neither party may commence any court proceedings under this Clause 25 in relation to the whole or part of the Dispute until 45 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

23.3 If the Dispute is not resolved within 45 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 45 days, or the mediation terminates before the expiration of the said period of 45 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause this Clause 25.

24. GOVERNING LAW

24.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

25. JURISDICTION

25.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

26. ACCEPTANCE

In witness whereof the parties have executed this Agreement comprising the conditions and the Schedules attached hereto.

Signed for and on behalf of QWARE:	QWARE Ltd
Signature	
Print name	
Job Title	
Date	
Signed for and on behalf of Customer:	Sample Company Limited
Signature	
Print name	
Job Title	
Date	

Schedule 1

Schedule of Data Processing Activities

Data controller (Customer)	Sample Company Limited
Account reference	SAM28241
Personal data under the control of the Customer which will or may be processed as a result of the undertaking by QWARE <i>Customer to enter details here -></i>	Details:
Please confirm if any of the data falls into any of the follow Sensitive/Special Categories listed below. If Yes please detail which applies here -> Personal data revealing: <ul style="list-style-type: none"> • racial or ethnic origin, political opinions, religious or philosophical beliefs • trade-union membership • genetic data, biometric data processed solely to identify a human being • health-related data • data concerning a person's sexual orientation and/or history 	Yes/No <input type="checkbox"/> Details of Sensitive/Special Category Data:
Data processor (QWARE)	QWARE Limited
Services provided	Available Services
Dates of delivery of the Services (subject to renewal based on the terms of the agreement)	Throughout the term of this agreement
Data processing activities required/anticipated to be undertaken by QWARE on the Personal Data to deliver the Services (Processing Activities)	Development and testing of the Software as detailed in a Statement of Work
For what purpose are the Processing Activities undertaken?	The Processing Activities are required to enable the delivery by QWARE of the Services; it would not be possible for the Customer to enjoy the benefit of the Services if the Processed Personal Data was not (or could not be) processed in this manner
In which countries are the Processing Activities undertaken by QWARE?	Inside the European Economic Area (EEA), primarily in the United Kingdom
In the delivery of the Services, any of the following third parties may undertake any of the Processing Activities?	<ul style="list-style-type: none"> • Microsoft • Infor

Schedule 2

Customer Reference Charges and Available Services

Reference Charges for project based services.

The following services may be included, in any proportion, within a Statement of Work (SOW) and/or Change Order, charges are based on the standard rates below:

Available Services	Standard Hourly Rate
Software Development	£165
Software Design	£165
Consultancy	£165
Project Management	£165
On-Site Training	£165
Remote Training and Materials Development	£145
Support Services	£145
Troubleshooting	£145

Hours worked after 17.30 on a Friday or a day before a public holiday in England, UK and before 09.00 on a Monday or the day after an English public holiday will be charged at double the above rates.

Technical Services Hours

Business Hours

Additional cover available by special arrangement

Travel, Accommodation and Subsistence

Reasonable travel, accommodation and subsistence expenses shall be recharged as agreed prior to any charges being submitted.

Mileage will be charged at prevailing HMRC rate

Public transport will be used where possible and booked in advance using standard class tickets to keep related charges to the minimum.

Accommodation costs will not exceed:

- General Location £150 per night
- Inner City Location £200 per night
- International location £200 per night

If the Customer has its own travel department or special local arrangements for accommodation etc. it can arrange for the required travel and/or accommodation for QWARE personnel and arrange direct payment.

Where on site attendance by QWARE staff is required and travel is greater than 150 miles from central London or the Fareham office QWARE retains the right to charge travel time. Any such charge will require prior authorisation from the Customer.

Schedule 3

Statement of Work Example Table of Content

- Objective/Overview
- Work items to be delivered
- Expected outcomes
- Out of scope items
- Customer Responsibilities
- Charges
- Billing Schedule
- Acceptance Confirmation (Signatures)
- Terms – MSA referenced