



QWARE Ltd Product Referral Agreement
For Sample Company Limited

Agreement Number: PRO00001

Document Version 1.0

Agreement

This agreement is made on the 30 June 2021 between:

QWare Limited (Company Number 13334085) whose registered office is at: Ground Floor Cromwell House, 15 Andover Road, Winchester, England, SO23 7BT (**QWARE**)

And

Sample Company Limited, whose registered office is at: [Company Address] (**Referring Party**).

BACKGROUND

QWARE is seeking to attract new customers for its own QWARE Products and associated services. Where a party does not wish to have any direct commercial engagement in the supply and/or and resale of QWARE Products, QWARE can offer a Referral Fee acknowledgement of referred customer introductions.

This agreement sets out the terms of the QWARE Referral Program.

Now it is hereby agreed as follows:

1. DEFINITIONS AND INTERPRETATIONS

The following Definitions apply in this agreement:

Agreed Purposes: in relation to Data Privacy, for the execution and management of the agreement, to include but not limited to licence management, billing, and support.

Controller, Data controller, Processor, Data processor, Data subject, Personal data, Processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation in force at the time.

Date of Introduction is date on which the communication of the Introduced Party details are made available to QWARE.

Data Protection Legislation: the Data Protection Act 2018 which incorporates the General Data Protection Regulation (**GDPR**) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK.

Introduction: is the provision by the Referring Party to QWARE in written form of contact details and any other available relevant information to QWARE. Thus, enabling QWARE to follow up and qualify the potential QWARE product sale.

Introduced Party: The person introduced to QWARE via the Introduction.

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

Product Order Value: Is the amount paid to QWARE by the Introduced Party, excluding any taxes or expenses for any QWARE Product. Where the order is for a monthly subscription product the Order Value will be assumed as the total to be paid by the customer in the first 12 months only.

Referral Fee: The payment to the Referring Party in recognition of a QWARE Product sale to the Introduced Party, as an outcome of the Introduction.

Services Order Value: Is the amount paid to QWARE by the Introduced Party, excluding any taxes or expenses for any QWARE provided professional services, such as Consulting, Development, Project Management.

QWARE Products: Those products developed by QWARE, primarily but not limited to intelli-CTi, Paribus 365 product families.

Qualifying Period means the 9 months from the Date of Introduction in which an order is received from the Introduced Party will be the Qualifying Order.

Qualifying Order: is the placement of one order by the Introduced Party within the Qualifying Period on which a Referral Fee will be paid.

Shared Personal Data: the personal data to be shared between the parties under this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: Names, and business related contact details, such as email(s), address(s), phone number(s).

Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

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- 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 the 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 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. REFERRAL PAYMENT TERMS

- 2.1. The Referring Party will be paid a Referral Fee if:
 - 2.1.1. QWARE did not have prior contact with the Introduced Party at the Date of Introduction
 - 2.1.2. QWARE receives a Qualifying Order from the Introduced Party within the Qualifying Period.
- 2.2. The calculation for the Referral Fees:
 - 2.2.1. On QWARE Products will be 10% of the Product Order Value.
 - 2.2.2. On QWARE Professional Services will be 10% of the value of QWARE only services on the Order.
 - 2.2.3. Excluded from the order values will be VAT or other taxes, Support and Maintenance, Software Assurance or similar, Expenses and Third-Party services.
- 2.3. Within 30 days of receiving a Qualifying Order the Referring Party will be informed of the existence of such Qualifying Order, its Order Value and Referral Fee due.
 - 2.3.1. Referral Fee payment will be due to the Referring Party 60 days after receipt of the first payment from the Introduced Party.
 - 2.3.2. QWARE will inform the Referring Party of the Referral Fee due. The Referring Party will then have the right to raise an invoice for the Referral Fee. Such invoice being payable by QWARE within 30 days of the invoice date.
- 2.4. The Referring Party will treat all information concerning the relationship between QWARE and the Introduced Party, whether contractual or not, as confidential.
- 2.5. QWARE will have no obligation to follow up any Introduction.
- 2.6. The follow up will be at the cost and risk of QWARE.
- 2.7. The Referring Party will have no liability whatsoever for any consequence of any work undertaken by QWARE for the Introduced Party.

3. TERMINATION

- 3.1. Either party shall have the right at any time to terminate this Agreement by not less than 30 days notice in writing to the other party.
- 3.2. In addition, the QWARE shall have the right to terminate this Agreement at any time by summary notice without any payment in lieu in the event of the Referring Party:
 - 3.2.1. commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from QWARE so to do, to remedy the breach; or
 - 3.2.2. shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if

the Integrator shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on business.

- 3.3. Any termination of the rights granted under this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

4. PRIVACY AND DATA PROTECTION

- 4.1. This sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 4.2. Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall constitute a material breach for the purposes of Clause 3.2.1.
- 4.3. Each party shall:
- 4.3.1. Ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
 - 4.3.2. Give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - 4.3.3. Process the Shared Personal Data only for the Agreed Purposes;
 - 4.3.4. Not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 4.3.5. Ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement;
 - 4.3.6. Ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
 - 4.3.7. Not transfer any personal data outside of the European Economic Area unless the transferor:
 - 1.1.1.1. Complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint controller); and
 - 1.1.1.2. Ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.
- 4.4. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 4.4.1. Consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
 - 4.4.2. Promptly inform the other party about the receipt of any data subject access request;
 - 4.4.3. Provide the other party with reasonable assistance in complying with any data subject access request;
 - 4.4.4. Not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
 - 4.4.5. Assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 4.4.6. Notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 4.4.7. At the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
 - 4.4.8. Use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

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4.4.9. Maintain complete and accurate records and information to demonstrate its compliance with this Clause; and

4.4.10. Provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

4.5. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

5. NON-SOLICITATION

5.1. 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 execution of this agreement.

5.2. This non-solicitation clause will be effective from the date on which any Works commences, up to the date 12 months after the termination of the agreement.

6. FORCE MAJEURE

6.1. 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:

6.1.1. beyond the reasonable control of a party;

6.1.2. materially affects the performance of any of its obligations under this agreement; and

6.1.3. could not reasonably have been foreseen or provided against.

7. GOVERNING LAW

7.1. 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.

8. JURISDICTION

8.1. 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.

Signed for and on behalf of:

QWARE Limited

Signed

Print name

Job Title

Date

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Signed for and on behalf of:

Sample Company Limited

Signed

Print name

Job Title

Date
