

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

Please read these Terms and Conditions carefully. These Terms form the Agreement for the provision of Available Products by QWARE via a subscription based service and/or licence.

1. DEFINITIONS AND INTERPRETATIONS

In these Terms and Conditions following **Definitions** apply:

"**Acceptable Use Policy**" means the policy published on the Available Products web site(s) as listed in Schedule 2;

"**Access Credentials**" means the usernames, passwords and other credentials enabling access to the Available Products;

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"**Anti-Corruption Laws**" means all applicable anti-bribery and anti-corruption laws (including the Bribery Act 2010);

"**Anti-Slavery Laws**" means all applicable anti-slavery and anti-human trafficking laws (including the Modern Slavery Act 2015);

"**Anti-Tax Evasion Laws**" means all applicable anti-tax evasion laws (including the Criminal Finances Act 2017);

"**API**" means the Application Programming Interface for the Available Products defined by QWARE and made available by QWARE to the Customer as appropriate to the specific Available Product;

"**Available Products**" means the QWARE Software and/or online QWARE Services authored and maintained by QWARE as listed in Schedule 2 which will be made available by QWARE to the Customer from time to time in accordance with these Terms and Conditions;

"**Authorised Reseller**" means a party who is duly signed up Reseller of QWARE and therefore can resell the Available Products to the Customer.

"**Available Products Specification**" means the functionality detailed in the relevant Available Products User Guide;

"**Business Day**" means:

- I. for the Americas any weekday other than a bank or public holiday in the USA, and
- II. for the Rest of the World and weekday other than a bank or public holiday in England, United Kingdom;

"**Business Hours**" means:

- I. for the Americas the hours of 09:00 to 17:00 EST, and
- II. for the Rest of the World the hours of 09:00 to 17:00 GMT OR on a Business Day;

"**Charges**" means the amounts calculated using the End User Subscription pricing details as published on the Available Product(s) web site as listed in Schedule 2;

"**Confidential Information**" means QWARE Confidential Information and the Customer Confidential Information;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Customer**" means the entity that ultimately acquires the Access Credentials for Available Products;

"**Customer Confidential Information**" means:

- a) any information disclosed by or on behalf of the Customer to QWARE at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - I. was marked or described as "confidential"; or
 - II. should have been reasonably understood by QWARE to be confidential; and
- b) the Customer Data;

"**Customer Data**" means the data made available by the Customer that is uploaded to, or synchronised to the Platform, or generated by the Platform as a result of the use of the Available Products by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"**Customer Indemnity Event**" has the meaning given to it in Clause 18.3;

"**Customer Personal Data**" means any Personal Data that is processed by QWARE on behalf of the Customer in relation to the Agreement, but excluding Personal Data with respect to which QWARE is a data controller;

"**Customer Systems**" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Available Products;

"**Data Protection Laws**" means the EU GDPR and the UK GDPR and all other applicable laws relating to the processing of Personal Data;

"**Documentation**" means the documentation for the Available Products produced by QWARE and delivered or made available by QWARE to the Customer;

"**End User**" means an individual having the Access Credentials as provided by the Customer, to use the Available Products

"**Effective Date**" means the date upon which the Customer either;

- a) executes written confirmation for one or more of the Available Products; or
- b) implements a Product Trial of any of the Available Products.

"**EU GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"**Included Third Party Products**" means any hosted, cloud or software-based services, products or licences provided by any third party that are included and provided with the Available Products by QWARE from time to time;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Minimum Term**" means in respect of the Agreement;

- a) the period to the end of the Minimum Subscription Period of the Available Products as published on the Available Product web site as listed in Schedule 2; or
- b) The end of a Product Trial if a paid subscription is not ordered by the Customer.

"**Personal Data**" means personal data under any of the Data Protection Laws;

"**Platform**" means the platform managed by QWARE and used by QWARE to provide, support and/or manage the Available Products, including application, database, system and server services;

"**Product Trial**" means the time limited (normally 30 days) access and use of an Available Product as made available by QWARE for the purposes for the Customer to test, review and confirm the Available Product meets their requirements.

"**QWARE Confidential Information**" means:

- a) any information disclosed by QWARE to the Customer at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- b) the financial terms of the Agreement;

"**QWARE Indemnity Event**" has the meaning given to it in Clause 28.1;

"**QWARE Service**" means an online service authored and managed by QWARE and provided to the Customer as part of an Available Product;

"**QWARE Software**" means a software application, plugin, or component code provided by QWARE to the Customer as part of an Available Product;

"**Subscription Period**" means the standard period an Available Product is subscribed for, normally a calendar month;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Available Products, but shall not include the provision of training services;

"**System Requirements**" means the supported software and hardware required to use the Available Products as detailed on the specific Available Product web site as detailed in Schedule 2.

"**Term**" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"**Terms and Conditions**" means all the documentation containing the provisions of this Agreement, namely the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

"**UK GDPR**" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"**Update**" means a hotfix, patch or minor version update to the Platform or Software;

"**Upgrade**" means a major version upgrade of the Platform or Software;

"**User Guide**" means the documented End User Guide as published on the specific Available Product web site as listed in Schedule 2.

"**User Interface**" means the interface for the Available Products designed to allow individual human users to access and use the Available Products.

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. AGREEMENT TERM

- 2.1 The Agreement shall come into force upon the Effective Date.
- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 21 or any other provision of these Terms and Conditions.

3. AVAILABLE PRODUCTS

- 3.1 Where the Available Product includes QWARE Software that is to be installed within the Customer's System, QWARE hereby grants to the Customer worldwide, non-exclusive licence to use the software for the internal business purposes of the Customer during the Term. For the avoidance of doubt, no such licence is provided for the QWARE Service or Platform QWARE that may be provided as part of the Available Products.
- 3.2 The licence granted by QWARE to the Customer under Clause 3.1 is subject to the following limitations:
 - 3.2.1 the Available Products may only be used in the supported environments and associated infrastructure as detailed in the published System Requirements.
 - 3.2.2 the Available Products may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
 - 3.2.3 the API, where available, may only be used by an application or applications approved by QWARE in writing and controlled by the Customer;

- 3.2.4 the Customer must not sub-license its right to access and use the Available Products; and
- 3.2.5 the Customer may make copies of the software as required to support its internal business use only.
- 3.3 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the access rights granted by QWARE to the Customer under Clause for the Available Products are subject to the following prohibitions:
 - 3.3.1 the Customer must not permit any unauthorised person or application to access or use the Available Products;
 - 3.3.2 the Customer must not use the Available Products to provide services to third parties;
 - 3.3.3 the Customer must not republish or redistribute any content or material from the Available Products;
 - 3.3.4 the Customer shall not attempt to deconstruct, decompile or otherwise attempt to reengineer the Available Products;
 - 3.3.5 the Customer must not make any alteration to the Platform; and
 - 3.3.6 the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Available Products without the prior written consent of QWARE.
- 3.4 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Available Products by means of the Access Credentials.
- 3.5 The Customer must comply with the published Acceptable Use Policy, and must ensure that all persons using the Available Products with the authority of the Customer comply with the Acceptable Use Policy.
- 3.6 The Customer must not use the Available Products in any way that causes, or may cause, damage to the Available Products or Platform or impairment of the availability or accessibility of the Available Products.
- 3.7 The Customer must not use the Available Products in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the QWARE Service provided by QWARE to its other customers using the Platform; and the Customer acknowledges that QWARE may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 3.8 The Customer must not use the Available Products:
 - 3.8.1 in any way that is unlawful, illegal, fraudulent or harmful; or
 - 3.8.2 in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.9 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

4. AVAILABLE PRODUCTS MAINTENANCE

- 4.1 QWARE may from time to time suspend the Available Products for the purposes of scheduled maintenance to the Platform, providing that such scheduled maintenance must be carried out in accordance with this Clause 4.
- 4.2 QWARE shall where practicable will give to the Customer at least 5 Business Days' prior written notice of scheduled maintenance that will, or is likely to, affect the availability of the Available Products or have a material negative impact upon the Available Products.
- 4.3 QWARE shall ensure that all scheduled maintenance is carried out outside Business Hours.
- 4.4 QWARE will make Software Updates and/or Upgrades available from time to time for the Available Products to provide new features, enhancements and fixes.

- 4.5 The Customer should apply these Updates/Upgrades within a reasonable time to ensure the stable operation of the Available Products.
- 4.6 QWARE may suspend the provision of the Maintenance if any amount due to be paid by the Customer to QWARE under the Agreement is overdue.

5. SUPPORT SERVICES

- 5.1 QWARE shall provide the Support Services to the Customer.
- 5.2 QWARE shall provide the Support Services with reasonable skill and care.
- 5.3 QWARE shall provide the Support Services in accordance with the Support Process Procures published on the Available Products web site(s) as listed in Schedule 2.
- 5.4 QWARE may suspend the provision of the Support Services to the Customer if any amount due to be paid by the Customer to QWARE under the Agreement is overdue.

6. CUSTOMER OBLIGATIONS

- 6.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to QWARE, or procure for QWARE, such:
- 6.1.1 co-operation, support and advice;
 - 6.1.2 Have an available non-production/test environment
 - 6.1.3 information and documentation; and
 - 6.1.4 governmental, legal and regulatory licences, consents and permits, as are reasonably necessary to enable QWARE to perform its obligations under the Agreement.
- 6.2 Apply any fixes or procedures provided by QWARE in a timely manner to the non-production/test environment.
- 6.3 The Customer must provide to QWARE, or procure for QWARE, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by QWARE to enable QWARE to perform its obligations under the Agreement.

7. CUSTOMER SYSTEMS

- 7.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the System Requirements subject to any changes agreed in writing by QWARE.

8. CUSTOMER DATA

- 8.1 The Customer hereby grants to QWARE a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of QWARE's obligations and the exercise of QWARE's rights under the Agreement. The Customer also grants to QWARE the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.
- 8.2 The Customer warrants to QWARE that the Customer Data when used by QWARE in accordance with the Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 8.3 Where the Platform retains Customer Data, this will be backed up on a rolling 14-day cycle. On the event of a system failure QWARE will consider the best option for recovering the Platform and may use the back-up but retains the right to use other options. On Termination of the Agreement, the Customer Data will be deleted along with all back copies within 14 Business Days.
- 8.4 QWARE will back up Customer Personal Data where that data relates to the subscription management of the Available Products for the purposes of restoring the Platform in the event of a failure daily. QWARE shall ensure that each such copy is sufficient to enable QWARE to restore the Available Products to the

state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a maximum period of 30 days. On Termination of the Agreement, the Customer Data will be deleted along with all back copies within 7 Business Days.

- 8.5 For the avoidance of doubt, QWARE does not store Payment Card Information (PCI). This is managed by our payment sub-processors.

9. INCLUDED THIRD PARTY PRODUCTS

- 9.1 Included Third Party Products will be provided by QWARE when identified by QWARE to be required to support functionality specific to the Customers environment. The available Included Third Party Products are listed with the associated Available Product in Schedule 2.
- 9.2 Where such products are required, any associated costs will be specified in the published End User Price list and will be added to the Charges.
- 9.3 Any licencing required for the Included Third Party Service will be the responsibility of QWARE.
- 9.4 QWARE may integrate the Available Products with any Third Party Products at any time.
- 9.5 QWARE shall use reasonable endeavours to maintain any integration with the Included Third Party Products that has been activated with respect to the Available Products account of the Customer. Subject to this, QWARE may remove, suspend, deactivate or limit any Included Third Party Products integration at any time in its sole discretion.
- 9.6 The Customer acknowledges and agrees that:
- 9.6.1 the activation of Included Third Party Products with respect to the Available Products account of the Customer may result in the transfer of Customer Data and/or Customer Personal Data from the Available Products to the relevant Third Party Products and vice versa;
 - 9.6.2 QWARE has no control over, or responsibility for, any disclosure, modification, deletion or other use of Customer Data and/or Customer Personal Data by any provider of Third Party Products;
 - 9.6.3 the Customer must ensure that it has in place the necessary contractual safeguards to ensure that the transfer of Customer Personal Data to, and use of Customer Personal Data by, a provider of Third Party Products is lawful;
 - 9.6.4 the Customer shall ensure that the transfer of Customer Data to a provider of Third Party Products does not infringe any person's Intellectual Property Rights or other legal rights and will not put QWARE in breach of any applicable laws.
 - 9.6.5 QWARE gives no guarantees, warranties or representations in respect of any Third Party Products; and
 - 9.6.6 QWARE shall not be liable to the Customer in respect of any loss or damage that may be caused by Third Party Products or any provider of Third Party Products.

10. NO ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

- 10.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from QWARE to the Customer, or from the Customer to QWARE.

11. CHARGES

- 11.1 The Customer shall pay the Charges to QWARE directly or via an Authorised Reseller in accordance with these Terms and Conditions.
- 11.2 All amounts stated in relation to these Terms and Conditions are, unless the context requires otherwise stated are exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to QWARE.

- 11.3 Product Trials are exempt from Charges. However, QWARE reserves the right to apply Charges to extended (greater than 30 days) Product Trials, any such Charges will be made known to the Customer before being invoiced.

12. PAYMENTS

- 12.1 QWARE shall issue invoices for the Charges either:
- 12.1.1 Directly to the Customer; or
 - 12.1.2 Indirectly to the QWARE Authorised Reseller partner of the Customer.
- 12.2 The Charges will be invoiced monthly in advance, unless a different payment anniversary is agreed in writing, i.e. quarterly, annually.
- 12.3 Payment must be received by QWARE prior to the period to which the Charges relate for the licence for the Available Products to remain active and available for use by the Customer.
- 12.4 If directly invoiced, the Customer must pay the Charges by credit card, direct debit or bank transfer (using such payment details as are notified by QWARE to the Customer from time to time).
- 12.5 It is the responsibility of the Customer to ensure the commercial agreement and related payments to the Authorised Reseller is such that payment by the Authorised Reseller complies with clause 12.3
- 12.6 If QWARE does not receive payment properly due to QWARE under these Terms and Conditions, QWARE may de-activate the Available Products until payment is received in full.
- 12.7 On termination of this agreement the Customer will pay any outstanding Charges.

13. CONFIDENTIALITY OBLIGATIONS

- 13.1 QWARE must:
- 13.1.1 keep the Customer Confidential Information strictly confidential;
 - 13.1.2 not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
 - 13.1.3 use the same degree of care to protect the confidentiality of the Customer Confidential Information as QWARE uses to protect QWARE's own confidential information of a similar nature, being at least a reasonable degree of care;
- 13.2 The Customer must:
- 13.2.1 keep QWARE Confidential Information strictly confidential;
 - 13.2.2 not disclose QWARE Confidential Information to any person without QWARE's prior written consent, and then only under conditions of confidentiality approved in writing by QWARE;
 - 13.2.3 use the same degree of care to protect the confidentiality of QWARE Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- 13.3 Notwithstanding Clauses 13.1 and 13.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to the Agreement and who are bound by a written agreement to protect the confidentiality of the Confidential Information that is disclosed.
- 13.4 No obligations are imposed by this Clause 13 with respect to a party's Confidential Information if that Confidential Information:
- 13.4.1 is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
 - 13.4.2 is or becomes publicly known through no act or default of the other party; or

13.4.3 is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

13.5 The restrictions in this Clause 13 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

13.6 Upon the termination of the Agreement, each party must immediately cease to use the other party's Confidential Information.

14. PUBLICITY

14.1 Neither party may make any public disclosures relating to the Agreement or the subject matter of the Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

14.2 Nothing in this Clause 14 shall be construed as limiting the obligations of the parties under Clause 13.

15. DATA PROTECTION

15.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

15.2 The Customer warrants to QWARE that it has the legal right to disclose all Personal Data that it does in fact disclose to QWARE under or in connection with the Agreement.

15.3 The Customer shall only supply to QWARE, and QWARE shall only process, in each case under or in relation to the Agreement:

15.3.1 the Personal Data of data subjects falling within the categories specified in Section 1 of Schedule 1 (Data processing information) (or such other categories as may be agreed by the parties in writing); and

15.3.2 Personal Data of the types specified in Section 2 of Schedule 1 (Data processing information) (or such other types as may be agreed by the parties in writing).

15.4 QWARE shall only process the Customer Personal Data for the purposes specified in Section 3 of Schedule 1 (Data processing information).

15.5 QWARE shall only process the Customer Personal Data during the Term, subject to the other provisions of this Clause 15.

15.6 QWARE shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Laws), as set out in these Terms and Conditions.

15.7 The Customer hereby authorises QWARE to make the following transfers of Customer Personal Data:

15.7.1 QWARE may transfer the Customer Personal Data internally to its own employees, offices and facilities, providing that such transfers must be protected by appropriate safeguards;

15.7.2 QWARE may transfer the Customer Personal Data to its third party processors such transfers must be protected by any appropriate safeguards; and

15.7.3 QWARE may transfer the Customer Personal Data to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data.

15.8 QWARE shall promptly inform the Customer if, in the opinion of QWARE, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

15.9 Notwithstanding any other provision of the Agreement, QWARE may process the Customer Personal Data if and to the extent that QWARE is required to do so by applicable law. In such a case, QWARE

shall inform the Customer of the legal requirement before processing, unless that law prohibits such information.

- 15.10 QWARE shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 15.11 QWARE and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Section 4 of Schedule 1 (Data processing information).
- 15.12 QWARE must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, QWARE shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, the Customer may terminate the Agreement on 7 days' written notice to QWARE, providing that such notice must be given within the period of 7 days following the date that QWARE informed the Customer of the intended changes. QWARE shall ensure that each third party processor is subject to the equivalent legal obligations as those imposed on QWARE by this Clause 15.
- 15.13 As at the Effective Date, QWARE is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in Section 5 of Schedule 1 (Data processing information).
- 15.14 QWARE shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 15.15 QWARE shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. QWARE may charge the Customer at its standard time-based charging rates for any work performed by QWARE at the request of the Customer pursuant to this Clause 15.15.
- 15.16 QWARE must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after QWARE becomes aware of the breach.
- 15.17 QWARE shall make available to the Customer all information necessary to demonstrate the compliance of QWARE with its obligations under this Clause 15 and the Data Protection Laws. QWARE may charge the Customer at its standard time-based charging rates for any work performed by QWARE at the request of the Customer pursuant to this Clause 15.17.
- 15.18 QWARE shall delete all of the Customer Personal Data:
- 15.18.1 on Termination of this Agreement;
 - 15.18.2 at the end of a paid subscription;
 - 15.18.3 at the end of a Product Trial if no paid subscription is ordered by the Customers; and
 - 15.18.4 shall delete existing copies and back-ups within 7 business days, save to the extent that applicable law requires storage of the relevant Personal Data.
- 15.19 QWARE shall allow for and assist with audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of QWARE's processing of Customer Personal Data with the Data Protection Laws and this Clause 15. QWARE may charge the

Customer at its standard time-based charging rates for any work performed by QWARE at the request of the Customer pursuant to this Clause 15.19.

- 15.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

16. WARRANTIES

- 16.1 QWARE warrants to the Customer that:

- 16.1.1 QWARE has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
- 16.1.2 QWARE will comply with all applicable legal and regulatory requirements applying to the exercise of QWARE's rights and the fulfilment of QWARE's obligations under these Terms and Conditions;
- 16.1.3 QWARE has or has access to all reasonable know-how, expertise and experience to perform its obligations under these Terms and Conditions; and
- 16.1.4 a performance standard no greater than reasonable care and skill.

- 16.2 QWARE warrants to the Customer that:

- 16.2.1 the Platform and Available Products will conform in all material respects with the Available Products User Guide;
- 16.2.2 the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs;
- 16.2.3 the Platform will incorporate security features reflecting the requirements of good industry practice.
- 16.2.4 the Available Products, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law; and
- 16.2.5 the Available Products, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

- 16.3 If QWARE reasonably determines, or any third party alleges, that the use of the Available Products by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, QWARE may at its own cost and expense:

- 16.3.1 modify the Available Products in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- 16.3.2 procure for the Customer the right to use the Available Products in accordance with these Terms and Conditions.

- 16.4 The Customer warrants to QWARE that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

- 16.5 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

17. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS

- 17.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, QWARE gives no warranty or representation that the Available Products will be wholly free from defects, errors and bugs.

- 17.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, QWARE gives no warranty or representation that the Available Products will be entirely secure.
- 17.3 The Customer acknowledges that the Available Products are designed to be compatible only with that software and those systems specified as compatible in the Available Products System Requirements.
- 17.4 QWARE does not warrant or represent that the Available Products will be compatible with any other software or systems;
- 17.5 The Customer acknowledges that QWARE will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Available Products; and, except to the extent expressly provided otherwise in these Terms and Conditions, QWARE does not warrant or represent that the Available Products or the use of the Available Products by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

18. INDEMNITIES

- 18.1 QWARE shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by QWARE of these Terms and Conditions.
- 18.2 The Customer must:
 - 18.2.1 upon becoming aware of an actual or potential QWARE Indemnity Event, notify QWARE;
 - 18.2.2 provide to QWARE all such assistance as may be reasonably requested by QWARE in relation to QWARE Indemnity Event;
 - 18.2.3 allow QWARE the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to QWARE Indemnity Event; and
 - 18.2.4 not admit liability to any third party in connection with QWARE Indemnity Event or settle any disputes or proceedings involving a third party and relating to QWARE Indemnity Event without the prior written consent of QWARE, and QWARE's obligation to indemnify the Customer under Clause 18.1 shall not apply unless the Customer complies with the requirements of this Clause 18.2.
- 18.3 The Customer shall indemnify and shall keep indemnified QWARE against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by QWARE and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").
- 18.4 QWARE must:
 - 18.4.1 upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
 - 18.4.2 provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
 - 18.4.3 allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
 - 18.4.4 not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer; and
 - 18.4.5 the Customer's obligation to indemnify QWARE under Clause 18.3 shall not apply unless QWARE complies with the requirements of this Clause 18.4.

- 18.5 The indemnity protection set out in this Clause 18 shall be subject to the limitations and exclusions of liability set out in the Agreement.

19. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 19.1 Nothing in this agreement shall limit or exclude QWARE's liability for:
- 19.1.1 death or personal injury caused by its negligence;
 - 19.1.2 fraud or fraudulent misrepresentation; or
 - 19.1.3 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.
- 19.2 Subject to Clause 21.1, 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:
- 19.2.1 loss of profits;
 - 19.2.2 loss of sales or business;
 - 19.2.3 loss of agreements or contracts;
 - 19.2.4 loss of anticipated savings;
 - 19.2.5 loss of or damage to goodwill;
 - 19.2.6 loss of use or corruption of software, data or information; and
 - 19.2.7 any indirect or consequential loss.
- 19.3 Subject to Clause 19.1, 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 total amount paid and payable by the Customer to QWARE under the Agreement in the 12 month period preceding the commencement of the event.
- 19.4 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.

20. FORCE MAJEURE EVENT

- 20.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 20.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
- 20.2.1 promptly notify the other; and
 - 20.2.2 inform the other of the period for which it is estimated that such failure or delay will continue.
- 20.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

21. TERMINATION

- 21.1 Either party may terminate the Agreement by giving to the other party not less than 30 days' written notice of termination, expiring at the end of any calendar month after the end of the Minimum Term.
- 21.2 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:

- 21.2.1 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;
 - 21.2.2 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;
 - 21.2.3 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;
 - 21.2.4 the other party commences negotiations with all or any class of its creditors with a view to re-scheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any 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;
 - 21.2.5 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;
 - 21.2.6 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);
 - 21.2.7 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;
 - 21.2.8 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;
 - 21.2.9 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;
 - 21.2.10 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 21.2.3 to Clause 21.2.9 (inclusive); or
 - 21.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 21.3 For the purposes of Clause 21.2.1 **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.
- 21.4 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:
- 21.4.1 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
 - 21.4.2 there is a change of control of the Customer.

22. EFFECTS OF TERMINATION

- 22.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 13, 14, 15, 18, 19, 22, 23, 25, 26, 27, 30, 31, 32, 33, 34, 35 and 36.
- 22.2 Except to the extent expressly provided otherwise in these Terms and Conditions, the termination of the Agreement shall not affect the accrued rights of either party.

23. NON-SOLICITATION OF PERSONNEL

- 23.1 The Customer must not, without the prior written consent of QWARE, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of QWARE who has been involved in any way in the negotiation or performance of the Agreement.
- 23.2 QWARE must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of the Agreement.

24. TREATMENT OF EMPLOYEES

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

25. ANTI-CORRUPTION

- 25.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Corruption Laws in relation to the Agreement.
- 25.2 Save to the extent that applicable law requires otherwise, each party must promptly notify the other if it becomes aware of any events or circumstances relating to the Agreement that will or may constitute a breach of the Anti-Corruption Laws (irrespective of the identity of the person in breach).

26. ANTI-SLAVERY

- 26.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Slavery Laws.
- 26.2 Any breach of this Clause 26 shall be deemed to constitute a material breach of the Agreement.

27. ANTI-TAX EVASION

- 27.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Tax Evasion Laws.
- 27.2 Any breach of this Clause 27 shall be deemed to constitute a material breach of the Agreement.

28. NOTICES

- 28.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- 28.1.1 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
- 28.1.2 sent by email to the addresses specified in the latest dated Statement of Works.
- 28.2 Any notice shall be deemed to have been received
- 28.2.1 if delivered by hand, with signature on delivery receipt:

28.2.2 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

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

28.3 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.

29. SUBCONTRACTING

29.1 Subject to any express restrictions elsewhere in these Terms and Conditions, QWARE may subcontract any of its obligations under the Agreement, providing that QWARE must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

29.2 QWARE shall remain responsible to the Customer for the performance of any subcontracted obligations.

30. WAIVER

30.1 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.

30.2 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.

31. SEVERABILITY

31.1 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.

31.2 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.

32. THIRD PARTY RIGHTS

32.1 The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

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

33. VARIATION

33.1 The Agreement may not be varied except by means of a written document signed by or on behalf of each party.

34. ENTIRE AGREEMENT

34.1 The main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

34.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

34.3 The provisions of this Clause 34 are subject to Clause 19.1.

35. GOVERNING LAW

35.1 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.

36. JURISDICTION

36.1 Each party irrevocably agrees that the courts of England 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.

Schedule 1 (Data Processing Information)

1. Categories of data subject

The people contacts and customer personnel of the Customer.

2. Types of Personal Data

Names, postal addresses, email addresses and telephone numbers.

The Customer must ensure No Special Category data is made available to QWARE for processing.

3. Purposes of processing

- Data matching
- Subscription/licence/billing management
- Technical support

4. Security measures for Personal Data

- Encrypted Data Transmission
- Encrypted Data Storage
- Single use credential transmission
- Encrypted Password Protection
- Token based security
- HTTPS Secure Socket Layer (SSL) Transport

5 – Sub-processors

Company	Prime Headquarters Location	Data Processing Role(s)
Microsoft	USA	Azure cloud infrastructure, CRM
Stripe	USA	Credit Card Payments
Mondago	UK	Telephony integration support
Xero	Australia	Accounting
DocuSign	USA	eSignatures

Schedule 2 Available Products

Intelli-CTi Family of Products

Web site <https://www.intellicti.com/>

- Intelli-CTi for Dynamics 365
- Intelli-CTi for Infor CRM

Included Third Party Products

Mondago – Go Connect Server

QWARE will provide the Go Connect Server solution from Mondago Limited, to enable connectivity to legacy, primarily on-premise systems as required.

QWARE is an authorised distributor of the Go Connect Server, as such has no ownership or rights to this or other such 3rd party products other than those right of distribution. All IP and copyrights etc remain with the authors.

QWARE cannot make any claim of ownership or rights to such products.

Paribus 365 Family of Products

Web site <https://www.paribus365.com/>

- Paribus 365
- Paribus Discovery

Included Third Party Products