

This *QWARE Subscription Agreement* applies between QWARE Limited (Company Number 13334085) whose registered office is at Newfrith House, 21 Hyde Street, Winchester, Hampshire, SO23 7DR ("**QWARE**") and the end user organisation of the QWARE Product, as identified:

- a) during the sign-up process for a Trial Subscription;
- b) in the Quotation for a Paid Subscription; or
- c) on a Product Order Form

(the "**Customer**").

Please read this *QWARE Subscription Agreement* carefully. It sets out the rights and obligations of QWARE and the Customer in relation to the QWARE Product.

## 1. DEFINITIONS AND INTERPRETATIONS

1.1 In the Agreement following definitions apply:

**"Acceptable Use Policy"** means the acceptable use policy published on the QWARE Product Web Site;

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

**"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, the Schedules to these terms and conditions, the Quotation (if any), and any amendments to that contract from time to time;

**"API"** means any application programming interface for the QWARE Product defined by QWARE and made available by QWARE to the Customer;

**"Authorised Reseller"** means a person that has been directly granted by QWARE the right to resell the QWARE Product;

**"Business Day"** any weekday other than a bank or public holiday in England, United Kingdom;

**"Business Hours"** the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**"Charges"** means the charges and other amounts due to be paid by the Customer to QWARE under the Agreement, including charges calculated in accordance with the Paid Subscription pricing details published on the QWARE Product Web Site;

**"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 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 was marked or described as "confidential", or should have been reasonably understood by QWARE to be confidential; and
- b) the Customer Data;

**"Customer Data"** means the data that is uploaded to or synchronised with the QWARE Platform by the Customer, or generated by the QWARE Platform as a result of the use of the QWARE Product by

the Customer (but excluding licensing, statistical and analytics data collected by QWARE relating to the use of the QWARE Product and excluding server log files);

**"Customer Personal Data"** means any Personal Data that is processed by QWARE on behalf of the Customer in relation to the Agreement, in the capacity of a processor on behalf of the Customer;

**"Customer Systems"** means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the QWARE Product, including any hardware and software upon which the QWARE Software is installed or used;

**"Data Protection Legislation"** means:

- a) to the extent the UK data protection law applies: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- b) to the extent the EU GDPR applies: the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data;
- c) EU GDPR means the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law; and
- d) UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**"End User"** means an individual that uses the QWARE Product on behalf of or with the authority of the Customer, or using Access Credentials provided to or generated by or on behalf of the Customer;

**"Effective Date"** means the date upon which the Agreement comes into force in accordance with Clause 2.1;

**"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 QWARE Product by QWARE from time to time, which may include those services, products and licences identified as such in Schedule 2 (Third Party Products);

**"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 and rights in designs);

**"Paid Subscription"** means a right for the Customer to access the QWARE Product, in consideration for the payment of the Charges, in accordance with the terms of a Quotation;

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

**"Quotation"** means a quotation or proposal for a Paid Subscription issued by QWARE to the Customer along with or under this *QWARE Subscription Agreement*;

**"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;
- b) the financial terms of the Agreement;
- c) QWARE Software code, along with any Update or Upgrade code.

**"QWARE Indemnity Event"** has the meaning given to it in Clause 18.1;

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

**"QWARE Product"** means the software product authored and maintained by QWARE, selected by the Customer via a trial or paid subscription.

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

**"QWARE Software"** means a software application, plugin or component code provided by QWARE to the Customer as (or as part of) the QWARE Product for installation and/or use on the Customer Systems;

**"Subscription"** means a Trial Subscription or Paid Subscription under the Agreement;

**"Subscription Period"** means, with respect to a Paid Subscription, the recurring subscription period for the QWARE Product specified in the Quotation;

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

**"System Requirements"** means the supported software and hardware required to use the QWARE Product as detailed on the QWARE Product Web Site from time to time;

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

**"Trial Subscription"** means time-limited access to the QWARE Product for the purpose of enabling the Customer to test and review the QWARE Product and to and confirm that the QWARE Product meets the Customer's requirements;

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

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

**"User Guide"** means the documented End User guide for the QWARE Product as published on the QWARE Product Web Site from time to time; and

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

1.2 References to Clauses and Schedules are to the clauses and schedules of the Agreement.

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

- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 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.
- 1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.7 A reference to the Agreement or to any other agreement or document referred to in the Agreement is a reference of the Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of the Agreement) from time to time.
- 1.8 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 AND SUBSCRIPTIONS

- 2.1 The Agreement shall come into force:
  - 2.1.1 if the initial Subscription under the Agreement is a Trial Subscription, upon the date the Customer is granted access to the QWARE Product under that Trial Subscription; and
  - 2.1.2 if the initial Subscription under the Agreement is a Paid Subscription, upon the date that the Customer gives its formal written acceptance of the terms of the Agreement following the issue of a Quotation for that Paid Subscription,(the "**Effective Date**").
- 2.2 The Agreement shall continue in force indefinitely, subject to an earlier termination in accordance with Clause 21 or any other provision of the Agreement.
- 2.3 Following the Effective Date, the parties may by written agreement from time to time vary concurrent user and/or seat limitations applicable to the Subscription..
- 2.4 With respect to Trial Subscriptions, the following provisions shall apply:
  - 2.4.1 no Charges shall be payable with respect to a Trial Subscriptions;
  - 2.4.2 unless QWARE has agreed otherwise in writing, a Trial Subscription shall be for a fixed period of 30 days beginning on the Effective Date, and shall automatically terminate at the end of that period unless the parties have agreed to a Paid Subscription;
  - 2.4.3 QWARE may limit the functionality of the Subscription Services during any Trial Subscription;
  - 2.4.4 QWARE gives no warranties or representations to the Customer under Clause 16 with respect to any Trial Subscription or the QWARE Product made available under any Trial Subscription; and
  - 2.4.5 the parties may at any time agree in writing to change the Subscription under the Agreement from a Trial Subscription to a Paid Subscription.

## 3. QWARE SOFTWARE

- 3.1 This Clause 3 applies to the extent that the QWARE Product is or includes QWARE Software.
- 3.2 QWARE hereby grants to the Customer worldwide, non-exclusive licence during the Term to:
  - 3.2.1 install the QWARE Software on the Customer Systems; and
  - 3.2.2 use that installed QWARE Software for the internal business purposes of the Customer and in accordance with the User Guide.

- 3.3 Except to the extent expressly permitted in the Agreement or required by law on a non-excludable basis, the rights granted by QWARE to the Customer under Clause 3.2 are subject to the following limitations and prohibitions, as well as those set out in Clause 5:
- 3.3.1 the QWARE Software may only be installed or otherwise used on Customer Systems meeting the System Requirements; and
  - 3.3.2 the Customer may only make such copies of the QWARE Software as are reasonably required to support its use in accordance with the Agreement.
- 3.4 QWARE will make Updates and/or Upgrades available from time to time for the QWARE Software to provide new features, enhancements and fixes.
- 3.5 Subject to Clause 3.6, the Customer must apply these Updates/Upgrades within a reasonable time and in accordance with the written instructions of QWARE.
- 3.6 The Customer must maintain a non-production/ test environment for the purpose of testing Updates and Upgrades to the QWARE Software; and the Customer must before applying any Update or Upgrade to any live system comprehensively test that Update or Upgrade, in a timely manner, in the non-production/test environment.
- 3.7 The Customer acknowledges that a failure to apply Updates and/or Upgrades in accordance with Clauses 3.4 to 3.6 may result in the QWARE Software becoming insecure, unstable or inoperable, and QWARE shall not be liable to the Customer for any loss or damage arising out of a failure of the Customer to fulfil its obligations under Clauses 3.4 to 3.6.

#### **4. QWARE SERVICES**

- 4.1 This Clause 4 applies to the extent that the QWARE Product is or includes QWARE Services.
- 4.2 QWARE hereby grants to the Customer worldwide, non-exclusive licence to use the QWARE Services by means of:
- 4.2.1 a web browser supported by the QWARE Services;
  - 4.2.2 applicable QWARE Software; and/or
  - 4.2.3 any API,
- in each case for the internal business purposes of the Customer and in accordance with the User Guide during the Term only.
- 4.3 Except to the extent expressly permitted in the Agreement or required by law on a non-excludable basis, the rights granted by QWARE to the Customer under Clause 4.2 are subject to the following limitations and prohibitions, as well as those set out in Clause 5:
- 4.3.1 the API, where available, may only be used by an application or applications approved by QWARE in writing and controlled by the Customer;
  - 4.3.2 the Customer must not make any alteration to the QWARE Platform; and
  - 4.3.3 the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the QWARE Platform or QWARE Services without the prior written consent of QWARE.
- 4.4 The Customer must comply with the Acceptable Use Policy and must ensure that all End Users and other persons using the QWARE Services with the authority of the Customer or by means of the Access Credentials comply with the Acceptable Use Policy.
- 4.5 The Customer must not use the QWARE Services in any way that causes, or may cause, damage to the QWARE Product or QWARE Platform or impairment of the availability or accessibility of the QWARE Product.

- 4.6 The Customer must not use the QWARE Services in any way that uses excessive QWARE Platform resources and as a result is liable to cause a material degradation in the services provided by QWARE to its other customers using the QWARE Platform; and the Customer acknowledges that QWARE may use reasonable technical measures to limit the use of QWARE Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 4.7 The Customer has no right to access the software code (including object code, intermediate code and source code) of the QWARE Services or QWARE Platform, either during or after the Term.
- 4.8 QWARE may from time to time suspend the QWARE Services for the purposes of scheduled maintenance to the QWARE Platform, providing that such scheduled maintenance must be carried out in accordance with this Clause 4. 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 QWARE Services or have a material negative impact upon the QWARE Services. QWARE shall ensure that all such scheduled maintenance is carried out outside Business Hours.

## **5. QWARE PRODUCT – GENERAL PROVISIONS**

- 5.1 The rights granted to the Customer under Clauses 3.2 and 4.2 are subject to the concurrent user and/or seat limitations specified on the QWARE Product Web Site and in the Quotation, subject to any variations to those limitations agreed by the parties in writing from time to time.
- 5.2 Except to the extent expressly permitted in the Agreement or required by law on a non-excludable basis, the rights granted by QWARE to the Customer under Clauses 3.2 and 4.2 are subject to the following limitations and prohibitions:
  - 5.2.1 the QWARE Product may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
  - 5.2.2 the Customer must not sub-license its right to access and use the QWARE Product;
  - 5.2.3 the Customer must not permit any unauthorised person or application to access or use the QWARE Product;
  - 5.2.4 the Customer must not use the QWARE Product to provide services to third parties;
  - 5.2.5 the Customer must not republish or redistribute any content or material from the QWARE Product;
  - 5.2.6 the Customer shall not attempt to deconstruct, decompile or otherwise attempt to reengineer the QWARE Product.
- 5.3 The Customer must not use the QWARE Product:
  - 5.3.1 in any way that is unlawful, illegal, fraudulent or harmful; or
  - 5.3.2 in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

## **6. SUPPORT SERVICES**

- 6.1 QWARE shall provide the Support Services to the Customer with reasonable skill and care and in accordance with the support processes and procedures specified on the QWARE Product Web Site.
- 6.2 QWARE shall have no obligation to provide Support Services in relation to any Included Third Party Product, but may in its sole discretion agree to do so.
- 6.3 QWARE shall have no obligation to provide Support Services with respect to any QWARE Software that has not had any Update or Upgrade applied in accordance with Clauses 3.4 to 3.6; nor will QWARE have any obligation to provide Support Services with respect to the QWARE Product if the Customer is in breach of Clause 7.4.

## **7. CUSTOMER OBLIGATIONS**

- 7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to QWARE, or procure for QWARE, such:



7.1.1 co-operation, support and advice; and

7.1.2 information and documentation,

as are requested by QWARE and reasonably necessary to enable QWARE to perform its obligations under the Agreement.

7.2 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.

7.3 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 QWARE Product by means of the Access Credentials.

7.4 The Customer shall ensure that the Customer Systems comply at all times during the Term with the System Requirements, subject to any exceptions and 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.

8.3 Where the QWARE Platform stores Customer Data, this will be backed up by QWARE in accordance with the User Guide.

## **9. INCLUDED THIRD PARTY PRODUCTS**

9.1 Included Third Party Products may be provided or made available by QWARE to the Customer, including where necessary to ensure that the QWARE Product will operate in the Customer System in accordance with the User Guide.

9.2 Where such products are required, any associated costs will be specified in QWARE's published price list on the QWARE Product Web Site and will be added to the Charges.

9.3 The Customer hereby agrees to the licence terms for the Included Third Party Products that are provided by QWARE to the Customer with the relevant QWARE Product, providing that QWARE shall be responsible for ensuring that such licence terms are reasonable.

9.4 Without prejudice to its other obligations under the Agreement: QWARE may integrate the QWARE Product with any Included Third Party Products at any time; and QWARE may modify, remove, suspend, deactivate or limit any Included Third Party Products integration at any time in its sole discretion.

9.5 The Customer acknowledges and agrees that, except as provided in Clause 16.1.5, QWARE gives no guarantees, warranties or representations in respect of any Included Third Party Products.

## **10. NO ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS**

10.1 Nothing in the Agreement 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 in accordance with the Agreement (unless the Customer has subscribed to the QWARE Product via an Authorised Reseller, in which case the Customer must pay the Authorised Reseller in accordance with the applicable contract).

- 11.2 All amounts stated in relation to the Agreement 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.

## **12. PAYMENTS**

- 12.1 QWARE shall issue invoices for the Charges directly to the Customer in advance of each corresponding Subscription Period or in accordance with such other invoicing agreement as the parties may have agreed in writing (unless the Customer has subscribed to the QWARE Product via an Authorised Reseller, in which case QWARE will invoice that Authorised Reseller).
- 12.2 Payment must be received by QWARE in cleared funds prior to the period to which the Charges relate.
- 12.3 The Customer must pay the invoiced 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).
- 12.4 If the Customer has subscribed to QWARE Product via an Authorised Reseller, the Customer shall be responsible for ensuring that the Authorised Reseller pays QWARE with respect to the Customer's Paid Subscriptions in accordance with the commercial agreement between that Authorised Reseller and QWARE, and that payment by the Authorised Reseller complies with Clause 12.2.
- 12.5 Notwithstanding any invoicing or payment agreement reached by the parties, the Customer will pay any outstanding Charges within the period of 7 days following the date of effective termination of the Agreement.
- 12.6 If any amount due to be paid by the Customer to QWARE under the Agreement or any other contract between the parties is overdue, or if an Authorised Reseller fails to pay QWARE any amount with respect to the Agreement or any other contract between the parties, QWARE may:
- 12.6.1 deactivate the QWARE Product; and/or
  - 12.6.2 suspend the provision to the Customer of any or all the QWARE Services, the Support Services, and/or any other services to be provided by QWARE to the Customer under the Agreement, until such time as payment is received in full, and for a period of up to 2 Business Days following such receipt.

## **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 the Agreement 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.

#### **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.

#### **15. DATA PROTECTION**

15.1 Each party shall comply with the Data Protection Legislation 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 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 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 Schedule 1 (Data processing information).

15.5 QWARE shall only process the Customer Personal Data during the Term, subject to Clause 22.3 and 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 restricted international transfers of the Customer Personal Data under the Data Protection Legislation), as set out in the Agreement.

15.7 The Customer hereby authorises QWARE to make the following international 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, providing that 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 Legislation.
- 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 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 generally authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, third parties within the categories identified in 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 Legislation.
- 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 Legislation. 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 Legislation. 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 the Customer Personal Data following the termination of the Agreement in accordance with Clause 22.3.
- 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 Legislation 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 Legislation result or will result in one or both parties not complying with the Data Protection Legislation 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 the Agreement;
- 16.1.2 QWARE will perform its obligations under the Agreement with reasonable care and skill;
- 16.1.3 the QWARE Product will conform in all material respects with the description in the User Guide, as it may be updated by QWARE from time to time;
- 16.1.4 QWARE will use reasonable endeavours to ensure that the QWARE Product is free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs, and will incorporate security features reflecting the requirements of good industry practice; and
- 16.1.5 neither the QWARE Product nor the Included Third Party Products, when used by the Customer in accordance with the Agreement, will infringe the Intellectual Property Rights of any person under English law.

- 16.2 If QWARE reasonably determines, or any third party alleges, that the use of the QWARE Product by the Customer in accordance with the Agreement infringes any person's Intellectual Property Rights, QWARE may at its own cost and expense:

- 16.2.1 modify the QWARE Product in such a way that it no longer infringes the relevant Intellectual Property Rights; or
- 16.2.2 procure for the Customer the right to use the QWARE Product in accordance with the Agreement.

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

- 16.4 All the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the Agreement. 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 the Agreement, QWARE gives no warranty or representation that the QWARE Product 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 the Agreement, QWARE gives no warranty or representation that the QWARE Product will be entirely secure.
- 17.3 The Customer acknowledges that the QWARE Product is designed to be compatible only with that software and those systems specified as compatible in the System Requirements. QWARE does not warrant or represent that the QWARE Product will be compatible with any other software or systems.
- 17.4 The Customer acknowledges that QWARE will not provide any legal, financial, accountancy or taxation advice under the Agreement or in relation to the QWARE Product; and, except to the extent expressly provided otherwise in the Agreement, QWARE does not warrant or represent that the QWARE Product or

the use of the QWARE Product 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 infringement or alleged infringement of any third party's Intellectual Property Rights by the QWARE Product (excluding any infringement or alleged infringement arising out of the Customer Data) (a "**QWARE Indemnity Event**").
- 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 indemnity protection set out in this Clause 18 shall not be subject to the limitations and exclusions of liability set out in the Agreement, except that Clause 19.7 shall apply.

## 19. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 19.1 Nothing in the Agreement shall limit or exclude party'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 any other liability which cannot be so limited or excluded under applicable law.
- 19.2 The limitations and exclusions of liability set out in this Clause 19 and elsewhere in the Agreement are all subject to Clause 19.1 and shall apply in relation to all liabilities including those arising under or in connection with the Agreement, including those arising in contract, tort (including negligence), for breach of statutory duty, or otherwise.
- 19.3 QWARE shall not be liable to the Customer for any:
- 19.3.1 loss of profits, efficiency or anticipated savings;
  - 19.3.2 loss of sales, business, agreements or contracts;
  - 19.3.3 loss of or damage to reputation or goodwill; or
  - 19.3.4 special, indirect or consequential loss.
- 19.4 QWARE shall not be liable to the Customer in respect of any loss or damage that may be caused by Included Third Party Products, providing that this Clause 19.4 shall not apply in relation to any loss or damage that arises out of the negligence of QWARE in selecting or including the relevant Included Third Party Products or any breach of Clause 16.1.5.

- 19.5 QWARE shall not be liable to the Customer for any loss or corruption of software, data or information, providing that this Clause 19.5 shall not apply with respect to any breach by QWARE of Clause 13 or Clause 15.
- 19.6 QWARE's liability to the Customer in relation to any event or series of connected events shall be limited to the greater of GBP 10,000 and 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 or events.
- 19.7 Without prejudice to Clause 19.6, QWARE's aggregate liability to the Customer under or in relation to the Agreement shall be limited to GBP 250,000.

## **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 If the Subscription under the Agreement is a Trial Subscription:
- 21.1.1 the Agreement will automatically terminate at the end of the period of 30 days following the Effective Date, unless QWARE has agreed otherwise in writing; and
- 21.1.2 if QWARE has agreed to an extension of the Trial Subscription beyond that 30-day period, the Agreement will automatically terminate at the end of that extended Trial Subscription period.
- 21.2 If the Subscription under the Agreement is a Paid Subscription, either party may terminate the Agreement at the end of any Subscription Period by giving to the other party at least 7 Business Days' prior written notice of termination.
- 21.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 21.3.1 the other party commits a material breach of any term of the 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;
- 21.3.2 the other party repeatedly breaches any of the terms of the 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 the Agreement;
- 21.3.3 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;
- 21.3.4 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 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;

- 21.3.5 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;
  - 21.3.6 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);
  - 21.3.7 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;
  - 21.3.8 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;
  - 21.3.9 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;
  - 21.3.10 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 21.2.3 to Clause 21.2.9 (inclusive); or
  - 21.3.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 21.4 For the purposes of Clause 21.3.1 "**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 the Agreement but for the breach.
- 21.5 Without affecting any other right or remedy available to it, QWARE may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the 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.

## 22. EFFECTS OF TERMINATION

- 22.1 Upon the termination of the Agreement, all the provisions of the Agreement shall cease to have effect, save that the following provisions of the Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.7, 12.1 to 12.5, 13, 15, 18, 19, 22, 23 and 28.
- 22.2 Except to the extent expressly provided otherwise in the Agreement, the termination of the Agreement shall not affect the accrued rights of either party.
- 22.3 Within 30 days following the date of effective termination of the Agreement, the Customer Data and the Customer Personal Data will be deleted from the Platform and from QWARE's back-up systems, except that QWARE may continue to store such data to the extent required by applicable law.

## 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 QWARE 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 by the Customer or any Customer personnel against any QWARE employee be reported and not immediately resolved, QWARE reserve the right to suspend further provision under the Agreement.
- 24.1.2 Should resolution not be forthcoming within a reasonable period, QWARE reserves the right to terminate the Agreement without any liability.

## **25. COMPLIANCE**

- 25.1 Each party warrants and undertakes to the other that it has complied and will continue to comply, in relation to the performance of the Agreement and the party's other activities relating to the Agreement, with all applicable:
- 25.1.1 anti-bribery and anti-corruption laws (including the Bribery Act 2010);
- 25.1.2 anti-slavery and anti-human trafficking laws (including the Modern Slavery Act 2015); and
- 25.1.3 anti-tax evasion laws (including the Criminal Finances Act 2017).
- 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 any of the laws referred to in Clause 25.1 (irrespective of the identity of the person in breach).
- 25.3 Any breach of this Clause 25 shall be deemed to constitute a material breach of the Agreement.

## **26. NOTICES**

- 26.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:
- 26.1.1 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
- 26.1.2 sent by email to the addresses specified in writing by the recipient.
- 26.2 Any notice shall be deemed to have been received
- 26.2.1 if delivered by hand, with signature on delivery receipt;
- 26.2.2 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
- 26.2.3 if sent by email, at 9.00 am on the next Business Day after transmission (providing that the party sending the email retains evidence of the transmission of the email).
- 26.3 This Clause 26 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.

## **27. SUBCONTRACTING**

- 27.1 Subject to any express restrictions elsewhere in the Agreement, QWARE may subcontract any of its obligations under the Agreement.
- 27.2 QWARE shall remain responsible to the Customer for the performance of any subcontracted obligations.

## **28. GENERAL**

- 28.1 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any

right or remedy provided under the 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 the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 28.2 If any provision or part-provision of the 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 28.2 shall not affect the validity and enforceability of the rest of the Agreement. If one party gives notice to the other of the possibility that any provision or part-provision of the 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.
- 28.3 The Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party. No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 28.4 The Agreement may not be varied except as follows:
- 28.4.1 during a Trial Subscription, by QWARE acting reasonably giving to the Customer written notice of the variation;
  - 28.4.2 from the start of Subscription Period, by QWARE giving to the Customer at least 10 Business Days' prior written notice of the variation;
  - 28.4.3 if a variation is reasonably required to ensure that one or both parties comply with applicable law, by QWARE giving to the Customer prior written notice of the variation; and/or
  - 28.4.4 in any case, by means of a written document signed by or on behalf of each party.
- 28.5 The Agreement 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. 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.
- 28.6 The 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.
- 28.7 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 the 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
- 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 categories

Category	Current providers and service	Data processing locations
Hosting infrastructure	Microsoft - Azure cloud infrastructure	USA
Telephony services	Mondago – telephony integration support	UK

## Schedule 2 QWARE Products

### 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 rights of distribution. All IP and copyrights etc remain with the authors.

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