

# **GCloud**

# **Master Services Agreement**



**QUALITEST GROUP UK LTD**

**AND**

**[INSERT ORGANISATION/DEPARTMENT NAME]**

**MASTER SERVICES AGREEMENT FOR THE PROVISION OF  
SOFTWARE TESTING SERVICES**

**THIS AGREEMENT** is made on \_\_\_\_\_, 20[ ]

**BETWEEN:**

(1) **QUALITEST GROUP UK LIMITED** (company number 4394772) whose registered office is at Equitable House, 47 King William Street, London, England, EC4R 9AF ("**Qualitest**"); and

(2) **[INSERT ORGANISATION/DEPARTMENT NAME]** (company number **[INSERT CLIENT COMPANY NUMBER]**) whose registered office is at **[INSERT CLIENT COMPANY'S REGISTERED OFFICE]** ("**Client**")

each, a "Party" and together the "Parties".

**BACKGROUND:**

(A) Qualitest is a supplier of software testing services and personnel and project delivery quality assurance and Client requires such services from time to time.

(B) Client appoints Qualitest to supply software testing services and/or personnel and project quality assurance from time to time on the basis of the terms set out in this Agreement.

**THE PARTIES AGREE:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following words will have the following meanings:

**"Agreement"** means these terms and conditions, each of the attached schedules and any document referred to, completed or to be completed in accordance with its provisions (including completed Statements of Work, as may be amended from time to time;

**"Appendix"** means the Appendix to a SOW setting out any Protected Data (if any) which Qualitest will process as part of the SOW and any other information required by Clause 22;

**"Beneficiary"** shall have the meaning set out in Clause 7.2;

**"Charges"** means the charges or other costs and expenses payable in accordance with Clause 14 and the relevant Statement of Work;

**"Client IPRs"** means any IPRs owned or licensed by Client which are supplied by Client (or its agents, contractors or representatives) to Qualitest from time to time in connection with the provision of the Services;

**"Client Premises"** means premises owned, controlled or occupied by Client or any member of its Group which are made available for use by Qualitest for the provision of the Services;

**"Client Property"** means any tangible resource provided by Client to Qualitest for use in connection with the Services;

**"Client Representative"** means the individual set out in schedule 1 (Representatives) who has authority to represent and bind Client under this Agreement;

**"Commencement Date"** means the date on which this Agreement has been executed by both Parties;

**"Confidential Information"** means all information which is disclosed by one Party to the other however conveyed and would appear to a reasonable person to be confidential or is marked confidential or is accompanied by a written statement saying that it is confidential or proprietary and which relates to the business affairs of the Party disclosing it including, products, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the Party disclosing it (or other companies within that Party's Group), and all information derived from the above together with the existence or provisions of this Agreement and the negotiations relating to it;

**"Contract Change"** means changes to the Services, this Agreement or a SOW;

**"Controller"** has the meaning set out in section 3 of the DPA;

**"Data Protection Laws"** means any applicable laws relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including: (a) the GDPR; (b) the DPA; (c) any laws which implement any such laws; (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

**"Data Subject"** means the identified or identifiable living individual to whom personal data relates;

**"Deliverables"** means the deliverables identified in the relevant Statement of Work as an output of the provision of the Services;

**"Deployed Personnel"** means any Qualitest personnel who provide the Services as identified within a Statement of Work;

**"Dispute Resolution Procedure"** means the procedure set out in Clause 27;

**"DPA"** means the Data Protection Act 2018;

**"Force Majeure Event"** means, in relation to a party, an event which is beyond the reasonable control of that party, and includes strike, lock-out, or labour disputes, act of God, fire, flood, storm, war, military action, riot, civil commotion, terrorism, epidemic, explosion or malicious damage and accident or breakdown of machinery;

**"GDPR"** means the General Data Protection Regulation, Regulation (EU) 2016/679;

**"Group"** means in relation to any company, that company and every other company which is from time to time a subsidiary or holding company of that company or a subsidiary of any such holding company (and the terms "subsidiary" and "holding company" shall have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006);

**"Individual"** has the meaning set out in Clause 2.1.1;

**"Intellectual Property Rights" or "IPRs"** means:

(a) patents, utility models, petty patents, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not) or know-how), registered designs, rights in copyright (including authors' and neighbouring or related rights), database rights, design rights, trademarks and service marks; and

(b) all rights in the nature of any of the items referred to in paragraphs (a) or (b) including continuations, continuations in part and divisional applications, reputation, trade names, business names, brand names,



get-up, logos, domain names and URLs, rights in unfair competition and, without prejudice to anything set out elsewhere in this definition, rights to sue for passing off and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction;

in each case, whether registered or unregistered, and all applications in respect of the same, anywhere in the world;

**"Losses"** means all liabilities, penalties, claims, awards, damages, interest, amounts agreed upon in settlement, costs and expenses reasonably incurred and proven (including legal fees, expenses and disbursements) or other losses incurred;

**"Managed Testing Services"** has the meaning set out in Clause 2.1.2;

**"Personal Data"** has the meaning set out in section 3 of the DPA;

**"Personnel"** means any of Qualitest's directors, officers and employees, including any contractors, agents, sub-contractors of Qualitest engaged in the provision of the Services;

**"Processing"** has the meaning set out in section 3 of the DPA;

**"Processor"** has the meaning set out in section 3 of the DPA;

**"Project"** means the consultancy task or work described in a Statement of Work;

**"Project Specific IPRs"** means IPRs in items created by Qualitest (or by a third party on behalf of Qualitest) exclusively for the purposes of this Agreement and/or any Statement of Work on or after the date of this Agreement and arising as a result of the performance of Qualitest's obligations under this Agreement and/or any Statement of Work on Client's premises;

**"Protected Data"** means Personal Data received from or on behalf of Client in connection with the performance of Qualitest's obligations under this Agreement;

**"Qualitest Background IPRs"** means

- (a) IPRs owned by Qualitest before the date of this Agreement, including for example those subsisting in Qualitest's standard tools, methods, process in physical or electronic media; and/or
- (b) IPRs created by Qualitest other than Project Specific IPRs;

**"Qualitest Representative"** means the individual set out in Schedule 1 (Representatives) who has authority to represent and bind Qualitest under this Agreement;

**"Records"** means timesheets maintained by Qualitest in connection with the performance of any Statement of Work;

**"Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**"Replacement Supplier"** means any third party supplier providing services to Client which are identical or substantially similar to any of the Services and which Client receives in substitution for any of the Services following termination of this Agreement or SOW, as the case may be;

**"Representative"** means either Client Representative or the Qualitest Representative as the case may be, and "Representatives" shall mean both of them;

**"Resource Services"** has the meaning set out in Clause 2.1.1;

**"Services"** means the Resource Services and/or Managed Testing Services to be provided by Qualitest to Client as set out in a Statement of Work;

**"Statement of Work"** or **"SOW"** means a document, substantively in the form set out in Schedule 2 (Statement of Work), describing the Service and/or Deliverables to be provided hereunder which may include any supplementary terms applicable to the delivery of the Services and/or Deliverables;

**"Term"** means the term of this Agreement as specified in Clause 23.1;

**"Termination Date"** means the date of termination or expiry of this Agreement howsoever caused; and

**"Working Day"** means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London.

1.2 In this Agreement (unless the context requires otherwise):

1.2.1 the words "including", "include", "for example", "in particular" and words of similar effect shall not limit the general effect of the words which precede them;

1.2.2 reference to any agreement, contract, document or deed shall include that document as varied, supplemented or novated from time to time;

1.2.3 the headings, index and front sheet are all for reference only and shall be ignored when construing this Agreement;

1.2.4 references to a Clause, schedule, paragraph or appendix are references to the Clause, schedule, paragraph or appendix of, or to, this Agreement; and

1.2.5 reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re-enactment or amendment of the same.

## 2. APPOINTMENT AND STATEMENTS OF WORK

2.1 Client appoints Qualitest to:

2.1.1 supply software systems testing personnel (each an **"Individual"**) to Client to enable Client carry out user acceptance testing and similar functions under Client's guidance and management (**"Resource Services"**); and/or

2.1.2 supply software testing consultancy service or project delivery quality assurance service (**"Managed Testing Services"**),

from time to time during the Term as may be documented and agreed in a Statement of Work.

2.2 The Parties shall from time to time discuss Client's requirements for Resource Services or Managed Testing Services. When discussions are sufficiently advanced, the Parties will prepare a draft Statement of Work for their respective review and approval.

2.3 Upon signature by both Parties, a Statement of Work will form a binding part of and be incorporated into the terms of this Agreement.

2.4 For the avoidance of doubt Qualitest shall not be obliged to provide any Resource Services or Managed Testing Services unless they have been documented and agreed in a Statement of Work executed by both Parties.

### 3. SERVICES

3.1 When providing Services, Qualitest shall:

3.1.1 use reasonable care, diligence and skill to deliver the Services and time shall not be of the essence;

3.1.2 ensure all written information Qualitest gives to Client regarding the Resource Services, is, so far as Qualitest is aware, when given, accurate and comprehensive in all material respects,

3.2 Where Qualitest is required under a Statement of Work to provide Resource Services, Client shall

3.2.1 be solely responsible for allocating work to the Individual and for the supervision, direction and control of the Individual from the time he or she reports to take up duties and for the duration of the SOW;

3.2.2 be responsible for all acts, errors and omissions of the Individual throughout the performance of the SOW, be they wilful negligent or otherwise and Client agrees that Qualitest has no liability for the performance and quality of the work undertaken by the Individuals, except as set out in Clause 3.1;

3.2.3 in all respects comply with all statutes by-laws and legal requirements to which Client is ordinarily subject in respect of its own staff.

3.3 Where Qualitest is required under a Statement of Work to provide Managed Testing Services, Qualitest shall:

3.3.1 not knowingly transmit any unlawful, libellous, defamatory, obscene, pornographic or profane material through Client systems;

3.3.2 where Qualitest has access to Client's systems, comply with all restrictions relating to access to software or other technology on Client's systems which are notified to Qualitest and agreed and documented in a Statement of Work;

3.3.3 provide reasonable co-operation with those third party contractors and suppliers named in a Statement of Work who provide Client with goods and/or services in relation to the particular Project but only to the extent it does not increase Qualitest's costs; and

3.3.4 comply with Client's information security policies and procedures while physically located on Client Premises and where Qualitest is using Client systems, provided that such policies and procedures have been notified in advance, and documented and agreed in a Statement of Work.

3.4 Qualitest shall in connection with its performance of this Agreement or any Statement of Work:

3.4.1 attend and participate in Quarterly reviews of Qualitest's performance under this Agreement at such premises as Client may reasonably require;

3.4.2 provide reasonable cooperation to Client to investigate any security breach or unauthorised access relating to Client systems arising in connection with the provision of the Managed Testing Services or the Resource Services; and

3.4.3 employ anti-virus procedures within any of Qualitest's equipment which will include use of an industry-recognised virus-scanning program.

## 4. CLIENT OBLIGATIONS

4.1 Client shall:

4.1.1 provide all reasonable assistance in a timely manner to Qualitest to enable it to perform its obligations in a Statement of Work;

4.1.2 comply with and perform any Client responsibilities set out in a Statement of Work;

4.1.3 procure that any third party contractors engaged by Client in connection with the Managed Testing Services co-operate with, and provide all information reasonably required by, Qualitest to allow it perform the Managed Testing Services;

4.1.4 where indicated in a Statement of Work, provide Qualitest with access to Client Premises and use of any shared office equipment, services and other facilities reasonably required to allow Qualitest to perform its obligations under the Statement of Work;

4.1.5 provide all tools, software and other equipment and obtain all necessary consents, authorisations and permissions required to carry out the Services;

4.1.6 have no responsibility for any loss of or damage to any equipment Qualitest brings onto Client Premises (except and to the extent caused by the negligence of Client or Client Representative);

4.1.7 not provide access to Client's Personal Data in the course of the supply of the Services (other than Personal Data strictly necessary for the performance of the Services by Qualitest) and ensure that all Personal Data is anonymised; and

4.1.8 indemnify Qualitest against any and all loss, damage, liability, costs and expenses suffered by Qualitest as a result of any injury to or death of any Deployed Personnel whilst at Client Premises caused by any negligent act or omission of Client.

## 5. PROBLEMS AND DELAYS CAUSED BY CLIENT

5.1 Provided always that Qualitest complies with Clause 5.2, Qualitest will not be liable for any delay or failure to supply Deployed Personnel, provide the Managed Testing Services and/or Deliverables or otherwise perform its obligations under a Statement of Work to the extent this is due to Client's acts, omissions or failure to comply with this Agreement including failure to comply with any Client responsibilities set out in a Statement of Work.

5.2 Where Qualitest reasonably believes that Client's acts or omissions or failure to comply with this Agreement including any Client responsibilities set out in a Statement of Work will impact on Qualitest's ability to perform its obligations under a Statement of Work, Qualitest shall (subject to Clause 5.3):



5.2.1 notify Client, providing reasonable details of the act, omission or failure and the impact Qualitest believe it is having; and

5.2.2 continue to carry out Qualitest's duties as best as it can and take all reasonable steps to mitigate the effects of the act, omission or failure.

5.3 If the performance of Qualitest's obligations under a Statement of Work is delayed at the request of Client, because of the acts, omissions or failures by Client, the Statement of Work shall be amended to take account of such delay in accordance with Clause 11. If Qualitest can demonstrate that:

5.3.1 the delay has resulted in an increase in cost to Qualitest of carrying out its obligations under this Agreement; or

5.3.2 Qualitest incurs Losses in connection with the delay that it cannot reasonably mitigate,

then Qualitest may, at its sole discretion, increase the Charges under a Statement of Work by an amount not exceeding any such demonstrable cost or Losses it incurs. Qualitest may invoice Client for and Client shall pay any additional Charges that become payable under this Clause.

## 6. ORDER OF PRECEDENCE

6.1 If there is any conflict or inconsistency between the documents that make up this Agreement, the following order of precedence will apply to the extent of the conflict or inconsistency:

6.1.1 the terms set out in this Agreement; then

6.1.2 any relevant Statement of Work (in relation to the Services provided under that SOW only); then

6.1.3 the Schedules to this Agreement.

## 7. SUPPLY OF SERVICES TO CLIENT GROUP

7.1 The Services shall be supplied initially to Client.

7.2 The Parties acknowledge and agree that this Agreement and the Services under it are for the benefit of Client only, except where and only to the extent it has been expressly stated in the SOW that the Services are to be supplied to another member of Client's Group (a "**Beneficiary**"); accordingly where the context so requires references to the "Client" in this Agreement shall be deemed to include references to the Beneficiary named in the applicable SOW.

7.3 This Clause 7 shall not operate so as to allow Client and any Beneficiary to recover any Losses from Qualitest in respect of the same or connected matters or events and shall not operate to increase Qualitest's liability beyond that which it would otherwise have directly to Client (including as limited by Clause 19).

7.4 Client agrees that it shall remain liable for the performance of all obligations attributed to a Beneficiary and for all acts and omissions of any Beneficiary (including any obligation to pay the Charges) under a Statement of Work (incorporating this Agreement) as though they were its own, notwithstanding that a Statement of Work is expressed to be for the benefit of the Beneficiary and not Client.

7.5 Notwithstanding Clause 7.2, Client and Qualitest may agree to rescind or vary this Agreement without the consent of any other person.

7.6 This Agreement is not intended to be for the benefit of, and shall not be enforceable under, the Contracts (Rights of Third Parties) Act 1999 other than by a person who is a Party to this Agreement or a Beneficiary.

## 8. REPRESENTATIVES

8.1 Qualitest will appoint the Qualitest Representative who will be responsible for the co-ordination of all matters relating to the Services. All communications, documentation and materials relating to the Services will be sent as appropriate by Qualitest Representative to Client's nominated Client Representative.

8.2 The Qualitest Representative will be available to liaise with, and respond to, queries from Client. Each Party will notify the other in writing promptly in the event of any proposed change to these appointments.

## 9. REVIEW MEETINGS

Qualitest will attend and participate in regular and (upon reasonable notice) ad-hoc review meetings (including by conference call) at such frequency as may be reasonably determined by Client (acting reasonably), to discuss Qualitest's performance under this Agreement. Qualitest will use reasonable endeavours to ensure the availability of Qualitest Representative and, where relevant, all other appropriate staff to attend and participate in such meetings.

## 10. PERSONNEL

10.1 Qualitest shall use its reasonable endeavours to ensure the continuity of Personnel assigned to perform the Services under any Statement of Work.

10.2 Any holidays or absence for training required by Deployed Personnel and who are based on Client Premises under a SOW shall be notified in advance to Client Representative or such other individual at Client's as is referred to in the relevant SOW or with whom the Deployed Personnel liaises in connection with their daily work.

10.3 If any Deployed Personnel leave Qualitest's employment or otherwise terminate their obligation to provide services on behalf of Qualitest, then Qualitest shall provide replacement Personnel of appropriate skill, qualification and experience as required by the role specified in the Statement of Work as soon as reasonably practicable.

10.4 Qualitest shall instruct its Deployed Personnel, while located on Client Premises, to observe and comply with Client's reasonable rules and regulations, including health and safety and security procedures notified to Qualitest in writing in a SOW.

10.5 If any Deployed Personnel located on Client Premises are absent from work for five or more days through sickness, Client may request that replacement Personnel of appropriate skill, qualification and experience be provided. Qualitest shall use its reasonable endeavours to provide replacement Personnel of appropriate skill, qualification and experience as required by the Statement of Work.

10.6 Qualitest will:

10.6.1 ensure that all Deployed Personnel are legally entitled to work in the United Kingdom and comply with all applicable laws governing legal entitlement to work;

10.6.2 ensure that all of the Personnel engaged in the provision of the Services have been vetted and screened in such manner as Client may have specified in a Statement of Work; and

10.6.3 report any accidents or incidents Qualitest or any Deployed Personnel become aware of and which occur on Client Premises to Client as soon as reasonably practicable and complete any record reasonably required by Client.

10.7 Qualitest acknowledges that none of the Personnel who perform the Services will become an employee of Client or any member of Client's Group by virtue of providing the Services hereunder and they shall have no obligation to pay any such individual's salary, national insurance, social security or any other amounts required by law or by contract to be paid to or in respect of any such employees by his or her employer except where agreed to the contrary pursuant to Clause 13.

## 11. CHANGE CONTROL

11.1 No modification or alteration to the terms of this Agreement or any Statement of Work shall have effect unless the same is agreed in writing by the Qualitest Representatives and Client Representative in accordance with the provisions of this Clause 11.

11.2 This Clause 11 will apply in relation to changes to this Agreement, or the specific Services and/or Deliverables already being provided pursuant to a Statement of Work. Where Client requires completely new types of services or deliverables, it will enter into a new Statement of Work with Qualitest.

11.3 Either Party may acting reasonably, from time to time, propose a Contract Change by giving written notice to the Qualitest Representatives or Client Representative (as the case may be). Such notice will specify in as much detail as is reasonably practicable the nature of the requested change together with any anticipated additional services required.

11.4 After receipt of a request for a Contract Change, Qualitest will provide Client Representative with a brief written proposal ("**Proposal**") setting out:

11.4.1 an estimate of the costs or savings which would result from the Contract Change;

11.4.2 brief details of the likely impact, if any, of the Contract Change on the performance of Qualitest's contractual obligations (including, without limitation, on timescales); and

11.4.3 any additional services required to fulfil the Contract Change.

11.5 If, following receipt of a Proposal, Client wishes to proceed with the proposed Contract Change it will notify Qualitest, who will at its own cost and as soon as is reasonably practicable, provide Client Representative with a further detailed written proposal, including but not limited to:

11.5.1 full details of the proposed Contract Change including any specifications;

11.5.2 any changes to the Charges if any, in respect of the proposed Contract Change;

11.5.3 a timetable for the implementation of the proposed Contract Change; and

11.5.4 details of the likely impact, if any, of the Contract Change on performance of Qualitest's contractual obligations,

(a "**Full Proposal**").

11.6 All Full Proposals submitted by Qualitest pursuant to Clause 11.5 above will remain open for acceptance by Client for no less than ten (10) Working Days following the date of submission to Client.

11.7 Client will review Qualitest's Full Proposal as soon as reasonably practicable after its receipt and will either:

11.7.1 accept the proposed Contract Change (such that the relevant provisions of this Agreement and/or the Statements of Work shall be varied accordingly); or

## 12.

12.1.1 reject the Contract Change,

and notify Qualitest in writing.

12.2 Qualitest will have no obligation to comply with any Contract Change until the Full Proposal is accepted by Client in writing.

## 13. AUDIT

13.1 Client shall be entitled to audit the Records once per calendar year during the Term for up to two days, except where Client acting reasonably is aware of, or has reasonable grounds to suspect, wilful misconduct or fraud in which event Qualitest shall be obliged to provide reasonable further assistance in connection with such events.

13.2 In connection with any audit under Clause 12.1, Qualitest shall allow Client staff access to its offices during normal working hours to audit the Records and Qualitest shall co-operate with any such audit and supply such of the Records as may reasonably be requested by Client. Client shall ensure that the Audit does not unreasonably interfere with the normal business of Qualitest and shall give 14 days' advance notice of any audit.

13.3 During the course of any audit carried out by Client, Qualitest shall make available a manager with the appropriate level of expertise and authority to answer any queries relating to the Records.

13.4 Qualitest shall comply with any reasonable request by Client for information to assist with interpretation of the Records but shall not be required to provide commercially sensitive information or third party confidential information.

## 14. NON-SOLICITATION

14.1 For the duration of each Statement of Work entered into hereunder and for twelve (12) months thereafter, Client shall not solicit, hire or engage in any manner any member of Qualitest's personnel involved in any development, sale, installation or support of any Services provided under this Agreement.

## 15. CHARGES AND PAYMENT

15.1 If a Statement of Work has been entered into hereunder on a time and materials basis, Qualitest shall invoice Client at the start of the month following the month in which the Services were provided, and Client shall pay Qualitest, at the hourly or daily rate stated in the Statement of Work for the number of previously agreed complete hours or days, as appropriate, worked by the Personnel. In such cases Qualitest shall ensure that the Personnel complete a weekly timesheet for the prior approval of and sign-off by Client Representative. Client shall not be liable for payment to Qualitest for any hours not worked due to annual or other leave, sickness or other incapacity or any other reason except absence on duty with the agreement of Client or the inability of Client to provide facilities for working other than instances of Force Majeure Events.

15.2 If a Statement of Work has been entered into hereunder on a fixed price basis, Qualitest shall invoice Client monthly in advance on a pro rata basis for the work completed in that month, unless otherwise specified in the relevant SOW.

15.3 Expenses incurred by personnel delivering the Services with the authority of Client on Client's business shall be reimbursed to Qualitest by Client unless otherwise stated in the SOW provided such expenses are in accordance with Qualitest's expenses policy in force from time to time (which shall be made available to Client on request) and are supported by receipts or other appropriate evidence, consistent with Qualitest's expenses policy.

15.4 Where a Statement of Work has been entered on a time and material basis, the Charges shall be calculated by reference to the prices set out in Qualitest's then current rate card in force from time to time ("**Rate Card**"). Once agreed the prices and rate used in an individual Statement of Work shall become fixed for the initial term of that Statement of Work only. Any change to the Rate Card shall not require approval as part of any Contract Change and the Rate Card shall be increased on an annual basis in accordance with the Retail Price Index (All Items).

15.5 Qualitest will not charge Client for any time spent by Personnel travelling to Client Premises without the prior written consent of Client.

15.6 All Charges shall be calculated and payments made in pounds sterling and value added tax at the prevailing rate will be added to Qualitest's invoice.

15.7 Client shall pay Qualitest the Charges within 30 days of the date of issue of an invoice, by BACS to a bank account nominated by Qualitest from time to time.

15.8 If Client disputes any amount invoiced, it shall notify Qualitest of the nature of the dispute within 10 Working Days of receipt of the invoice giving all relevant details and refer the matter to the Dispute Resolution Procedure. Pending the resolution of the dispute Client shall be entitled to withhold payment of the portion of the invoice that is subject to a genuine dispute.

15.9 Qualitest may charge daily interest on late payment of any undisputed sum, from the due date of payment, whether before or after judgment, at the annual rate of 4% above the base rate of Lloyds Bank PLC for the time being.

## 16. INTELLECTUAL PROPERTY OWNERSHIP

16.1 The Parties agree that:

16.1.1 Client shall not acquire any right, title or interest in or to the Intellectual Property Rights of Qualitest including the Qualitest Background IPRs; and

16.1.2 Qualitest shall not acquire any right, title or interest in or to the Intellectual Property Rights of Client or its licensors, including Client IPRs.

16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 15.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

16.3 Subject to the terms of this Agreement, and upon payment of the applicable fee, Qualitest hereby assigns to Client title to and all rights and interest in the Project Specific IPRs.



16.4 If requested to do so by Client, Qualitest shall execute all documents and do all such further acts as may be reasonably necessary to perfect the assignment under Clause 15.3.

16.5 Qualitest may use for any purpose any information which may be retained in the unaided memories of personnel performing the Services such as ideas, concepts, know-how, experience and techniques which do not contain any Confidential Information belonging to Client.

16.6 Client hereby grants to Qualitest a licence to use the Project Specific IPRs for any purpose relating to the Services or the exercise of Qualitest's normal business or functions, including the right to sub-license the Project Specific IPRs to members of the Qualitest Group.

16.7 Client hereby grants to Qualitest a revocable, non-exclusive, worldwide, royalty free, licence to copy, adapt, publish, distribute or otherwise use any other Client IPRs (including any third party IPRs supplied to Qualitest in connection with this Agreement by Client) solely to enable Qualitest to provide the Services during the Term and/or thereafter to maintain any Records relating to this Agreement.

16.8 Qualitest may, subject to Client's prior written consent (not to be unreasonably withheld) devise a case study of any Services delivered under a SOW to market its services to third parties.

16.9 Each party hereby grants to the other the express right to use its mark and logo solely to identify the other party as a provider of services or client (as the case may be) and for no other purposes (unless otherwise agreed in writing).

## 17. MUTUAL IPR INDEMNITY

17.1 Subject to Clause 16.2, each Party undertakes to defend the other from and against any claim or action that any of the Intellectual Property Rights supplied by one Party ("**Indemnifying Party**") to the other ("**Innocent Party**") under this Agreement and its use by the Innocent Party in accordance with the terms of this Agreement and the SOW infringe the Intellectual Property Rights of a third party ("**IPR Claim**") and will on demand fully indemnify the Innocent Party from and against any Losses finally awarded against the Innocent Party as a result of or in connection with that IPR Claim.

17.2 Any Intellectual Property Rights generated pursuant to provision of the Resource Services shall be excluded from Clause 16.1 as they are generated under the management, control and supervision of Client and Qualitest shall have no liability in respect of any IPR Claims relating to such Intellectual Property Rights.

17.3 If any IPR Claim is made against the Innocent Party, the Indemnifying Party will promptly and at its own expense undertake one of the following:

17.3.1 procure for Innocent Party the right to continue using infringing items (or any part thereof) in accordance with the terms of this Agreement; or

17.3.2 modify or replace the infringing items so as to avoid the infringement or alleged infringement and the Innocent Party shall cease to use the infringing items; or

17.3.3 if the Indemnifying Party is Qualitest, refund all amounts which Client has paid to Qualitest under this Agreement in relation to the provision of the infringing item and the Innocent Party shall cease to use the infringing items.

17.4 If the Indemnifying Party modifies or replaces the infringing items the replacement items:

17.4.1 must not detract in any material respect from the Deliverables; and

17.4.2 must comply with the warranties and requirements contained in this Agreement.

## 18. WARRANTIES

18.1 Each Party warrants to the other that it has the full right, power and authority to enter into this Agreement and to carry out its obligations under this Agreement, and all Statements of Work entered into hereunder and that it will comply with the provisions of the DPA.

18.2 Qualitest warrants, represents and undertakes to Client that:

18.2.1 in respect of Resource Services, Qualitest will select and supply Deployed Personnel in a competent and professional manner, using due skill, care and diligence;

18.2.2 in respect of Managed Testing Services, all Services provided under any Statement of Work entered into hereunder will be performed in a competent and professional manner by qualified Personnel, using due skill, care and diligence;

18.2.3 in respect of Managed Testing Services, each of the Personnel assigned by Qualitest to provide Services under any Statement of Work entered into hereunder will have the necessary skill, training, supervision and background necessary to accomplish their assigned tasks;

18.2.4 all Managed Testing Services supplied under any Statement of Work to this Agreement shall conform in all material respects to the specifications agreed within any such Statement of Work.

18.3 Client agrees that all representations and warranties not expressly set out in this Agreement are hereby excluded to the fullest extent permitted by law.

## 19. INSURANCE

19.1 Qualitest will maintain in force for the Term of this Agreement with a reputable insurer:

19.1.1 employer's liability insurance for an amount of not less than £5,000,000 per occurrence or series of occurrences arising from the one event;

19.1.2 public and general third party insurance for the minimum amount of £2,000,000 per occurrence or series of occurrences arising from the one event; and

19.1.3 professional indemnity insurance for the minimum amount of £1,000,000 per individual claim.

19.2 At the reasonable request of Client on an annual basis, Qualitest shall promptly provide evidence of the insurances which Qualitest is obliged to maintain under this Agreement.

## 20. LIABILITY

20.1 Neither Party limits its liability for:

20.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or

20.1.2 fraud or fraudulent misrepresentation by it or its employees; or

20.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

20.1.4 any matter where liability cannot be limited or excluded by law.

20.2 Subject to Clauses 19.1, 19.5 and 19.6, each Party's total aggregate liability for any Losses arising under the indemnity in Clauses 16.1 (Mutual IPR Indemnity) and 26 (TUPE) shall be unlimited.

20.3 Subject to Clauses 19.1, 19.2, 19.5 and 19.6, each Party's total aggregate liability for any Losses arising in or under or in connection with this Agreement (other than a SOW) whether arising from tort (including negligence), breach of contract or otherwise shall in no event exceed an amount equal to £50,000.

20.4 Subject to Clauses 19.1, 19.2, 19.5 and 19.6, Qualitest's total aggregate liability for any Losses arising in or under or in connection with a Statement of Work in a calendar year whether arising from tort (including negligence), breach of contract, under an indemnity or otherwise shall in no event exceed an amount equivalent to 100% of the Charges paid or payable, under that Statement of Work in that calendar year.

20.5 Subject to Clause 19.1 neither Party will be liable to the other Party under this Agreement or any Statement of Work:

20.5.1 for any indirect, special or consequential loss or damage; or

20.5.2 for any:

20.5.2.1 loss of profits or turnover;

20.5.2.2 loss of anticipated savings;

20.5.2.3 wasted expenditure;

20.5.2.4 loss of opportunities; or

20.5.2.5 damage to goodwill or loss of reputation,

(whether direct or indirect).

20.6 Nothing in this agreement excludes or limits Client's liability to pay the Charges.

20.7 The parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 19 is held to be invalid under any law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 19.

20.8 Nothing in this Clause 19 shall act to reduce or affect a Party's general duty to mitigate its loss.

## 21. FORCE MAJEURE

21.1 Neither Party shall be liable to the other for any breach or non-performance of this Agreement (including under any Statement of Work) arising from a Force Majeure Event.

21.2 If Qualitest is delayed or prevented from complying with its obligations under this Agreement (including under any Statement of Work) by a Force Majeure Event then the requirement to comply with those obligations shall be suspended for as long as, and to the extent that, performance is delayed or prevented by that event.

21.3 If the suspension continues for more than 30 days, either Party may terminate the affected Statements of Work, or if all Statements of Work are affected by a Force Majeure Event the entire Agreement, immediately by giving written notice in writing to the other Party.

21.4 If the Agreement or a Statement of Work is terminated pursuant to Clause 20.3 the Parties agree that they shall bear their own Losses in relation to termination.

## 22. CONFIDENTIALITY

22.1 All Confidential Information given by one Party to the other, or otherwise obtained or developed by one Party relating to the other, shall be kept secret and confidential by the recipient Party throughout the Term and following its termination or expiry. Such Confidential Information shall not be used or disclosed other than for the purposes of the proper performance of this Agreement or with the prior written consent of the other Party.

22.2 The obligations of confidentiality in this Clause 21 shall not extend to any matter which the recipient Party can show:

22.2.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;

22.2.2 was independently disclosed to it by a third party entitled to disclose the same; or

22.2.3 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

22.3 Following signature of this Agreement, the parties shall issue a mutually agreed press release. No other public announcement shall be made without both parties' prior written approval (such approval not to be unreasonably withheld or delayed), except that a party may make public disclosure of the information contained in previously agreed press releases or announcement without the further approval of the other party.

## 23. DATA PROTECTION

23.1 Unless the parties otherwise agree, Client shall not provide Qualitest access to any Protected Data.

23.2 Clauses 22.2 and 22.3 shall apply if Client informs Qualitest that it shall provide Qualitest access to Protected Data in accordance with Clause 4.1.7. The parties agree that Client is a Controller and that Qualitest is a Processor for the purposes of processing Protected Data pursuant to this Agreement. Client shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. Client shall ensure all instructions given by it to Qualitest in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in this Agreement relieves Client of any responsibilities or liabilities under any Data Protection Laws.

23.3 Qualitest shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.

## Instructions:

23.4 Qualitest shall only process (and shall ensure the Personnel only process) the Protected Data in accordance with the Appendix and this Agreement (including when making any transfer), except to the extent:

23.4.1 that alternative processing instructions are agreed between the parties in writing; or

23.4.2 otherwise required by applicable law (and shall inform Client of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and

if Qualitest believes that any instruction received by it from Client is likely to infringe the Data Protection Laws it shall promptly inform Client and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

## Security

23.5 Taking into account the state of technical development and the nature of processing, Qualitest shall implement and maintain the technical and organisational measures set out in the Appendix to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

## Sub-processing and personnel

23.6 Qualitest shall:

(a) not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of Client;

(b) prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Clause 22 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by Qualitest and ensure each such Sub-Processor complies with all such obligations;

(c) remain fully liable to Client under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and

(d) ensure that all natural persons authorised by Qualitest or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

Client authorises the appointment of the Sub-Processors listed in the Appendix ("Sub-Processors").

## Assistance

23.7 Qualitest shall (at Client's cost):

(a) assist Client in ensuring compliance with Client's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Qualitest; and



(b) taking into account the nature of the processing, assist Client (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of Client's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

## International transfers

23.8 Qualitest shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or the European Union or to any international organisation without the prior written authorisation of Client.

## Audits and processing

23.9 Qualitest shall, in accordance with Data Protection Laws, make available to Client such information that is in its possession or control as is necessary to demonstrate Qualitest's compliance with the obligations placed on it under this Clause 22 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by Client (or another auditor mandated by Client) for this purpose (subject to a maximum of one audit request in any 12 month period under this Clause 22.8).

## Breach

23.10 Qualitest shall notify Client without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

## Deletion/return

23.11 On the end of the provision of the Services relating to the processing of Protected Data, at Client's cost and Client's option, Qualitest shall either return all of the Protected Data to Client or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Qualitest to store such Protected Data. This Clause 22 shall survive termination or expiry of this Agreement.

## 24. TERM AND TERMINATION

### Term

24.1 Unless terminated earlier in accordance with its terms or otherwise by operation of law, this Agreement shall come into force on the Commencement Date and shall continue for an initial period of 36 months and after which shall continue in force thereafter unless or until terminated by either Party giving notice in writing to the other, such notice not to expire prior to the end of the initial period of 36 months and to be effective on the later of:

24.1.1 the date falling three (3) months' following the date of service of the notice; or

24.1.2 the date when all Services due to be provided under any incomplete Statements of Work have been completed

(the "Term").

### Termination for insolvency



24.2 Either Party may terminate this Agreement or an individual Statement of Work by giving notice in writing to the other with immediate effect from the date of service if it has reason to believe that the other Party will become insolvent, cease to carry on business, becomes insolvent or ceases business.

## Termination for non-payment

24.3 Qualitest may terminate this Agreement or an individual Statement of Work upon giving written notice to Client if Client fails to make any payments which are due in relation to any Statement of Work (and which are not disputed in accordance with Clause 14.8) and Client fails to remedy this breach within thirty (30) days of being notified by Qualitest of this non-payment.

## Termination of Statements of Work

24.4 Any Statement of Work may be terminated immediately by notice in writing by either Party if the other Party is in material breach of any of its obligations under the Statement of Work (with the exception of non-payment by Client in relation to which Clause 23.3 will apply) and fails to remedy the breach (if capable of remedy) within thirty (30) days after written notice by the other Party specifying the breach and requiring the same to be remedied.

24.5 Client agrees and acknowledges that any termination of an individual Statement of Work will not impact any other Statements of Work or other Services being provided pursuant to this Agreement and which have not themselves been terminated.

## 25. CONSEQUENCES OF TERMINATION

25.1 Upon termination or expiration of this Agreement or any Statement of Work, Qualitest will promptly:

25.1.1 subject to the payment of all Charges due to Qualitest, deliver to Client all copies of the Deliverables in Qualitest's possession;

25.1.2 return to Client (or destroy, at Client's option) and permanently delete from its information technology systems, all copies of any of Client's Confidential Information in its possession, custody or control (or in the possession or control of any of Personnel); and

25.1.3 return all Client Property then within its possession, custody or control,

in each case insofar as they relate to the terminated elements of the Services and this Agreement.

## 26. SURVIVAL OF TERMS AND ACCRUED RIGHTS

Termination or expiry of this Agreement, however caused, shall be without prejudice to any obligations or rights of either of the parties which may have accrued before termination or expiry and shall not affect any provision of this Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination or expiry including the following Clauses: 1 (Definitions and Interpretation), 6 (Order of Precedence), 7 (Supply of Services to Client Group), 13 (Non-Solicitation), 14 (Charges and Payment), 15 (Intellectual Property Ownership), 16 (Mutual IPR Indemnity), 19 (Liability), 21 (Confidentiality), 24 (Consequences of Termination), 25 (Survival), 26 (TUPE), 27 (Dispute Resolution), 29 (Entire Agreement), 31 (Notices), 32 (Waiver and Cumulative Remedies), 33 (Relationship of the Parties), 34 (Severance) and 35 (Governing Law and Jurisdiction).

## 27. TUPE

27.1 It is the belief of the parties that this Agreement or the arrangements envisaged under it or the commencement or the end (whether in whole or part) of this Agreement do not constitute a "relevant transfer" for the purposes of the Regulations.

27.2 If by virtue of the Regulations and the commencement of this Agreement (whether in whole or in part) any employment or any contract of employment or any liability regarding the employment of any person shall transfer to (or be alleged to transfer to) from Client or any previous supplier of services being replaced or substituted by the Services to Qualitest as a result of Qualitest's provision of the Services to Client ("**Incoming Transferred Employee**");

27.2.1 Qualitest may terminate the employment of any such Incoming Transferred Employee; and

27.2.2 Client shall indemnify Qualitest in full for and against all Losses incurred or suffered by Qualitest arising out of or in connection with:

27.2.2.1 the employment and/or termination of any such Incoming Transferred Employee in accordance with Clause 26.2.2 (including the cost of employment until the date of dismissal); and

27.2.2.1 any other act or omission of Client, or any other event or occurrence, in respect of such Incoming Transferred Employee, including any failure by Client to comply with its obligations under TUPE

in either case whether before, on or after commencement of this Agreement (whether in whole or in part)

27.3 The parties will comply with their obligations to provide information to a Replacement Supplier about the individuals assigned to the Services and to inform and consult with affected employees in relation to any potential transfer to a Replacement Supplier under TUPE. If by virtue of the Regulations and the termination or expiry of this Agreement (whether in whole or in part) for whatever reason, any employment or any contract of employment or any liability regarding the employment of any person employed by Qualitest (other than Qualitest affected employee referred to above) shall transfer to (or be alleged to transfer to) Client ("**Transferred Employee**"), the parties shall discuss how to address the situation. In the absence of an agreement:

27.3.1 Client or any Replacement Supplier may terminate the employment of any such Transferred Employee; and

27.3.2 Qualitest shall indemnify Client in full for and against all Losses incurred or suffered by Client arising out of or in connection with:

27.3.2.1 the employment and/or termination of any such Transferred Employee; and

27.3.2.2 any other act or omission of Qualitest, or any other event or occurrence, in respect of such Transferred Employee;

in either case whether before, on or after the termination or expiry of this Agreement (whether in whole or in part).

## 28. DISPUTE RESOLUTION

28.1 Any dispute which may arise between the Parties with respect to any matter or thing arising out of or in relation to this Agreement shall, in the first instance, be referred for discussion and resolution by the

Representatives. If agreement is not reached at that level within five (5) Working Days of such referral, the matter shall be referred to more senior personnel within the respective Parties who shall endeavour to reach agreement within a period of five (5) Working Days from the date of the matter first being referred to them.

28.2 If the dispute is not resolved in accordance with Clause 27.2 the Parties agree to submit that dispute to the exclusive jurisdiction of the English courts.

## 29. ASSIGNMENT

Neither Party shall assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed except that Qualitest may assign or transfer any of its rights and obligations to a member of its Group.

## 30. ENTIRE AGREEMENT

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

30.2 Each Party agrees that it shall have no remedies in respect of (i) any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement (except in the case of fraudulent misrepresentation); or ii) any innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## 31. COUNTERPARTS

31.1 This Agreement may be signed in separate copies. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

## 32. NOTICES

32.1 Any notice given by one Party to another under this Agreement shall be in writing, delivered by hand or by prepaid first class or email to the address given in Schedule 1 of this Agreement, and in all cases marked for the attention of the Qualitest Representative in relation to Qualitest and Client Representative in relation to Client.

32.2 Notices delivered by hand or by email shall be given on the day of receipt (unless received after 5.00 pm in which case they shall be given on the next Working Day). Notices sent by prepaid first class post shall be deemed to have been given two (2) Working Days after the date of posting.

32.3 Either Party may vary their address and/or contact for notices by giving notice to the other. The notice must expressly state that the new address is the address for notices and/or the new contact is the contact to whose attention all future notices should be brought, as the case may be.

## 33. WAIVER AND CUMULATIVE REMEDIES

33.1 No failure or delay by either Party to exercise any right or remedy arising under, or in connection with, this Agreement (collectively, any "action") will act as a waiver, or otherwise prejudice or restrict the rights of that Party, in relation to that action or any other contemporaneous or future action.

33.2 The rights and remedies arising under, or in connection with, this Agreement are cumulative and, except where otherwise expressly provided in this Agreement, do not exclude rights and remedies provided by law or otherwise.

## 34. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement or any SOW is intended to create a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other. Except where otherwise expressly provided in this Agreement, neither Party shall have authority to make representations, act in the name or on behalf of, or otherwise to bind the other.

## 35. SEVERANCE

35.1 If any Clause of this Agreement or any SOW is or becomes illegal, invalid or unenforceable in any respect, it shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement.

35.2 If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.

35.3 If any illegal, invalid or unenforceable provision is deemed omitted, Qualitest and Client will try to agree on suitable terms to replace the one(s) which is(are) deemed omitted. The new Clause(s) should, so as far as possible, achieve the same economic, legal and commercial aim as the omitted one(s).

## 36. GOVERNING LAW AND JURISDICTION

This Agreement, the SOWs and any dispute or non-contractual obligation arising out of or in connection with them shall be governed by and construed in accordance with English law. Subject to the Dispute Resolution Procedure, each Party hereby submits to the exclusive jurisdiction of the English courts over any dispute arising out of or in connection with this Agreement.



This Agreement has been entered into on the date first stated above.

Signed for and on behalf of **QUALITEST** )  
**GROUP UK LTD** by: ) Signature

Name (block  
capitals)

Director/authorised  
signatory

Signed for and on behalf of Client by: )  
 ) Signature

Name (block  
capitals)

Director/authorised  
signatory

## SCHEDULE 1: REPRESENTATIVES

### Part 1: Client Representative

***[Note: Insert details- name, telephone (landline and mobile), address and email address]***

### Part 2: Qualitest Representative

***[Note: Insert details- name, telephone (landline and mobile), address and email address]***

SCHEDULE 2: TEMPLATE STATEMENT OF WORK

[insert standard MSA statement of work]

# QUALITEST™

Qualitest is the world's leading AI-Powered Quality and Digital Engineering company.

For over 26 years, we've been helping clients deliver high quality products, enabling businesses to reduce the risk, time, and costs of implementing vital IT solutions by Engineering Quality from inception.

We are pioneering in building modern Digital Engineering services focusing on transformative capabilities, and specialist Quality Engineering, Quality Assurance and Testing services focusing on delivering assured quality rapidly while reducing and controlling costs.

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