

QuickThink Cloud Limited Managed Services Terms and Conditions

These are the terms and conditions of QuickThink Cloud Limited, a company incorporated in England and Wales (registration number 08783872) with its registered office at Kestrel Court, Harbour Road, Portishead, Bristol, BS20 7AN ("**QTC**").

These terms and conditions set out the basis upon which QTC will provide services to the company, firm or person identified as the customer in the Proposal (the "**Customer**"). QTC will ask for the Customer's express consent to these terms and conditions before QTC begins working with the Customer.

Please read these terms and conditions carefully, and if you have any questions about these terms and conditions, please contact QTC.

1. Definitions and interpretation

1.1 In the Agreement:

"**Acceptable Use Policies**" means the acceptable use policies of QTC's infrastructure services providers, as identified (as at the date of the Agreement) in the Proposal;

"**Additional Services**" means any services that QTC provides or agrees to provide to the Customer that are outside the scope of those services specified in the Proposal;

"**Agreement**" means a managed services agreement between the parties incorporating:

- (a) a Proposal agreed between the parties;
- (b) these terms and conditions; and
- (c) the SLA,

together with any amendments to the Agreement from time to time;

"**Agresso Software**" means the Unit4 Agresso ERP suite produced and maintained by Unit4 NV;

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

"**Business Hours**" means between 07:00 and 19:00 GMT/BST on a Business Day;

"**Charges**" means all amounts payable by the Customer to QTC under or in relation to the Agreement;

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

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

"**Customer Confidential Information**" means:

(a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to QTC during the Term that at the time of disclosure: (i) is marked as "confidential", (ii) is described by the Customer as "confidential", or (iii) should be reasonably understood by QTC to be confidential; and

(b) the Customer Data;

"Customer Data" means all data that is stored on or processed by a Server and:

(a) has been uploaded or copied, or otherwise added, to the Server; or

(b) has been generated by the Server as a consequence of action taken,

by or at the instigation of the Customer, any person acting on behalf of the Customer or any person using the Customer's account(s), but excluding data stored in the Window Active Directory of the Software Platform (such as Customer account data);

"Customer Licensed Software" means those third party software programs and packages in respect of which the Proposal specifies the Customer must obtain a licence (excluding the Agresso Software);

"Data Protection Legislation" means all privacy laws applicable to the Customer Data which is processed under or in connection with this Agreement, including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (or equivalent local regulations) the General Data Protection Regulation of the European Union (Regulation (EU) 2016/679) (the "GDPR"), the Data Protection Act 2018 and any secondary legislation in any country clarifying or enacting permitted derogations from the same, together with all codes of practice and other guidance on the foregoing issued by any relevant Data Protection Authority, all as amended from time to time and terms defined in the Data Protection Legislation shall bear the same meaning in this Agreement save where expressly defined otherwise;

"Effective Date" means the date of signature of the Proposal by the second of the parties to sign;

"Effective Term" means number of years after the date of signature of the Proposal the Customer has committed to;

"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 or problems with the internet or any public telecommunications network, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Service" means the hosting of the Software Platform and Customer Data by QTC, and the provision of the Agresso Software to the Customer by means of the Software Platform;

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

"Maintenance Services" means maintenance services in relation the Agresso Software, the Software Platform and/or the Server provided or to be provided by QTC to the Customer under the Agreement;

"Managed System" means the system comprising the Servers, the Software Platform and the Agresso Software;

"Personal Data" means personal data as defined in the Data Protection Legislation which is included in the Customer Data and processed by QTC in accordance with clause 14 below ;

"Proposal" means a proposal document issued by QTC and signed or otherwise agreed by each of the parties specifying the particulars of the Agreement, together with a service scope document issued by QTC to the Customer;

"QTC Confidential Information" means:

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by QTC to the Customer during the Term that at the time of disclosure: (i) is marked as "confidential", (ii) is described by QTC as "confidential", or (iii) should be reasonably understood by the Customer to be confidential; and
- (b) the terms of the Agreement, including for the avoidance of doubt all financial terms and the provisions of the Proposal and the SLA;

"QTC Indemnity Event" has the meaning given to it in Clause 11.6;

"Related Entity" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"Resource Limits" means the limits on the resources utilised by the Hosted Service, as set out in the Proposal, which may be varied by the mutual agreement of the parties from time to time;

"Server" means a physical or virtual server hosting one or more elements of the Software Platform or Agresso Software, controlled by QTC and used for the provision of the Hosted Service, including web servers, application servers, database servers and testing servers;

"Services" means the services provided or to be provided under the Agreement, as specified in the Proposal and the SLA, which may include the Set-up Services, Hosted Service, Maintenance Services, Support Services and Additional Services;

"Set-up Services" means the set-up of the operating systems of the Servers, and the installation and configuration of the Software Platform and the Agresso Software on the Servers, enabling the provision of the Hosted Service;

"SLA" means the service level agreement provided by QTC to the Customer and relating to the Services;

"Software Platform" means the software platform designed by QTC to enable the provision of the Agresso Software as a cloud service incorporating and utilising a range of third party software applications and services;

"Subcontractor" means any third party to which QTC subcontracts any obligations under the Agreement;

"Support Services" means any support services relating to the Managed System (and, if the Proposal so specifies, the thin client software used to access the Agresso Software) provided or to be provided by QTC to the Customer under the Agreement; and

"Term" means the term of the Agreement.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement.
- 1.4 In the Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

2. Agreement and Services

- 2.1 The Agreement will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 15.
- 2.2 QTC shall provide the Services to the Customer during the Term.
- 2.3 The Services shall be provided in accordance with the Proposal and the SLA.

3. Set-up Services

QTC shall provide the Set-up Services to the Customer in accordance with the timetable set out in the Proposal.

4. Hosted Service

- 4.1 This Clause 4 shall govern the Hosted Service to be provided to the Customer under the Agreement.
- 4.2 QTC will make available for the exclusive use of the Customer the Servers specified in the Proposal, and will ensure that those Servers meet the requirements of the Proposal.
- 4.3 QTC hereby grants to the Customer:
 - (a) the right to use the Software Platform via the internet for the purposes of accessing and using the Agresso Software; and
 - (b) administration rights in relation to each Server, restricted in such manner as the parties may agree or, absent any agreement, as QTC may determine.
- 4.4 The Customer acknowledges that any changes made to a Server, the Software Platform or the Agresso Software by the Customer shall be at the Customer's sole risk.

- 4.5 The Customer must not configure, or allow any other person to configure, any Server, the Software Platform or the Agresso Software in any way contrary to any guidelines on configuration made available by QTC to the Customer from time to time.
- 4.6 For the avoidance of doubt, hardware used to provide the Hosted Service will remain the property of QTC and/or its Subcontractors at all times.
- 4.7 Unless QTC expressly agrees otherwise in writing, QTC shall have the right to access and audit any Server at any time for the purpose of monitoring the Customer's compliance with the terms of the Agreement. Following receipt of a written request from QTC, the Customer shall promptly facilitate and enable such access and audit (including providing such login details as may be required to enable such access and audit).
- 4.8 The Customer's utilisation of resources through the Hosted Service must not exceed the Resource Limits.
- 4.9 The Customer acknowledges that QTC may use technical measures to prevent the Customer exceeding the Resource Limits.
- 4.10 If the Customer's utilisation of the Hosted Service exceeds the Resource Limits in such a way as to have a material negative effect upon:
- (a) the operation of QTC's computers, systems, networks and/or services; or
 - (b) the ability of any other of QTC's customers to use those computers, systems, networks and/or services,
- then QTC may suspend access to the Hosted Service or any element thereof, with or without notice to the Customer, and may impose additional restrictions on the Customer's use of the Hosted Service.
- 4.11 Without prejudice to QTC's rights under Clause 4.10, if the Customer's utilisation of the Hosted Service exceeds or threatens to exceed the Resource Limits, the parties will endeavour to agree a variation to the Agreement. If the parties cannot agree such a variation within a reasonable period (being not more than 30 days) following notice from QTC to the Customer requesting such variation, and resource utilisation continues to exceed those limits, the Customer will be deemed to be in material breach of the Agreement.
- 4.12 Subject to Clause 5.3, QTC will maintain Hosted Service availability at the levels specified in the SLA, and in the event that the Hosted Service fails to meet those availability levels, QTC may grant to the Customer service credits in accordance with the provisions of the SLA.
- 4.13 QTC will make such back-ups of Customer Data, Software Platform configuration, Agresso Software configuration and Server configuration as may be specified in the Proposal and the SLA; and QTC will implement such disaster recovery systems as may be specified in the Proposal and the SLA.

5. Maintenance Services

- 5.1 This Clause 5 shall govern the Maintenance Services to be provided to the Customer under the Agreement.

5.2 QTC shall apply updates and upgrades to, and shall optimise the performance of:

- (a) the Agresso Software;
- (b) the Software Platform; and
- (c) each Server,

during the scheduled Maintenance Services window specified in the SLA, providing that updates and upgrades may also be applied at any time agreed between the parties.

5.3 Access to the Agresso Software and other services may be unavailable or intermittently available during the provision of updates, upgrades and other scheduled and emergency Maintenance Services. Unavailability or intermittent availability of the Hosted Service as a result of scheduled or emergency Maintenance Services under this Clause 5 shall not constitute unavailability for the purposes of the availability commitments in the SLA.

5.4 Notwithstanding the other provisions of this Clause 5, QTC reserves the right:

- (a) to install or uninstall software on any Server; and
- (b) to apply updates, upgrades and patches to any software installed on any Server,

in each case with or without notice, where it is reasonably necessary to do so to ensure the security and/or integrity of the Managed System.

5.5 QTC will provide the Maintenance Services in accordance with the service levels specified in the SLA.

6. Support Services

6.1 This Clause 6 shall govern the Support Services to be provided to the Customer under the Agreement.

6.2 QTC will make available to the Customer a helpdesk facility for the purpose of (inter alia) providing support to the Customer in relation to the Managed System.

6.3 The Customer may access the helpdesk using the access details specified in the Handover Document.

6.4 The Customer must make all requests for Support Services through the helpdesk.

6.5 The helpdesk will be available during those hours specified in the SLA.

6.6 QTC shall respond to and resolve requests for Support Services made through the helpdesk in accordance with the response and resolution timetables specified in the SLA.

6.7 QTC will provide the Support Services in accordance with the service levels specified in the SLA.

7. Additional Services

7.1 The parties may agree from time to time that QTC shall provide Additional Services

to the Customer.

- 7.2 Unless the parties agree otherwise in writing, Additional Services will form part of the Services under the Agreement, and accordingly shall be subject to these terms and conditions.
- 7.3 Unless the parties have agreed otherwise in writing, the Customer will:
- (a) pay to QTC Charges in respect of Additional Service at QTC's standard time-based charging rates; and
 - (b) reimburse QTC for transport, accommodation and subsistence expenses reasonably incurred by QTC in the provision the Additional Services.

8. Customer obligations

- 8.1 The Customer shall be responsible for obtaining, at its own cost:
- (a) a licence for the Agresso Software that permits QTC to host the Agresso Software and use the Agresso Software in accordance with the terms of the Agreement; and
 - (b) licences for any Customer Licensed Software that permit the use of the Customer Licensed Software as anticipated by the Agreement.
- 8.2 The Customer must maintain the licences referred to in Clause 8.1 during the entirety of the Term, and if the Customer fails to do so, this shall be deemed to be a material breach of the Agreement.
- 8.3 The Customer must provide to QTC written evidence of the licences referred to in Clause 8.1 and their maintenance in accordance with Clause 8.2 promptly following receipt of a written request from QTC for the Customer to do so.
- 8.4 The Customer shall provide QTC with:
- (a) all co-operation, information and documentation; and
 - (b) all access to the software, computers, servers, networks, systems and premises of the Customer,
- reasonably required for the provision of the Services.
- 8.5 The Customer must ensure that any passwords relating to the Services are non-obvious and not likely to be susceptible to standard password cracking techniques. It is the Customer's responsibility to keep such passwords confidential and secure, and to change such passwords on a regular basis. The Customer will notify QTC immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.
- 8.6 Except to the extent that the Agreement expressly provides otherwise:
- (a) the Services are provided to the Customer only; and
 - (b) the Customer must not resell or otherwise provide or make available the Services to any third party.
- 8.7 The Customer must comply with the terms of the Acceptable Use Policies, and must

ensure that all persons using the Services under the authority of the Customer or by means of the Customer's account(s) comply with the terms of the Acceptable Use Policies. QTC shall notify the Customer of any changes to the Acceptable Use Policies promptly following the publication of any such change.

9. Charges and payments

- 9.1 QTC shall issue invoices for the Charges to the Customer in accordance with the provisions of the Proposal.
- 9.2 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 9.3 QTC may vary the Charges on and from any anniversary of the Effective Date by giving to the Customer not less than 30 days' written notice of the variation, providing that no such variation will result in the relevant element of the Charges increasing during the Term by more than the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.
- 9.4 The Customer will pay Charges to QTC in cleared funds within 45 days following the date of issue of an invoice for the relevant Charges.
- 9.5 Charges must be paid by bank transfer or any other method authorised by QTC (using such payment details as are notified by QTC to the Customer from time to time).
- 9.6 If the Customer does not pay any amount properly due to QTC under or in connection with the Agreement, QTC may:
- (a) charge the Customer interest on the overdue amount at the rate of 4% per year above the UK base rate of Barclays Bank Plc from time to time (which interest will accrue daily and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.7 QTC shall have the right to set off any amount owed by the Customer to QTC against any amount owed by QTC to the Customer, in each case whether the amount is owed:
- (a) under the Agreement or any other contract; or
 - (b) as a result of any liability arising out of the Agreement or any other contract,
- and QTC may exercise its right under this Clause 9.7 by giving written notice of such exercise to the Customer.
- 9.8 If the Customer fails to pay to QTC any amount owed under the Agreement by the due date, then QTC may send to the Customer a demand for payment; and if the Customer does not pay the overdue amount within 30 days following the issue of the demand, QTC may notify the Customer of their intention to terminate the Agreement and prepare to return all of the data and systems hosted by QTC back to the Customer. The Customer shall have a further 30 days to make arrangements to receive the data and systems, failing which QTC may suspend, withhold and/or render inaccessible any or all of the Services and/or the Customer's accounts

relating to the Services until such time as payment is received, without prejudice to QTC's other rights under the Agreement.

10. Intellectual Property Rights

10.1 Save as expressly provided in the Agreement:

- (a) all Intellectual Property Rights in: (i) the Software Platform, the Services and any improvements to the Software Platform and Services; and (ii) any works and materials produced by or on behalf of QTC in the course of the provision of the Services, are and shall remain, between the parties, the exclusive property of QTC; and
- (b) the Customer shall have no right or licence to exercise or exploit such Intellectual Property Rights.

10.2 The Customer hereby grants to QTC the right to store, copy, transmit and otherwise use the Customer Data for the purposes of performing its obligations, and exercising its rights, under the Agreement.

10.3 Subject to Clause 10.2, all Intellectual Property Rights in the Customer Data are and shall remain, between the parties, the exclusive property of the Customer.

10.4 QTC must not sell the Customer Data; and QTC must not provide the Customer Data to any third party except as contemplated by the Agreement or with the express written consent of the Customer.

11. Warranties and indemnity

11.1 The Customer warrants to QTC that:

- (a) it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) the use by QTC of the Customer Data in accordance with the terms of the Agreement will not infringe any third party Intellectual Property Rights.

11.2 QTC warrants to the Customer that:

- (a) it has the legal right and authority to enter into and perform its obligations under the Agreement;
- (b) it will perform its obligations under the Agreement with reasonable care and skill;
- (c) the use by the Customer of the Software Platform in accordance with the terms of the Agreement will not infringe any third party Intellectual Property Rights; and
- (d) it shall use reasonable care in the appointment of third party internet service providers, telecommunications providers, utility providers and other infrastructure providers whose service may affect the performance of its obligations under this Agreement.

11.3 QTC shall use all reasonable measures and procedures to secure the operating systems, servers and connections to those servers in line with industry intrusion prevention good practice. If QTC is providing the Hosted Service, QTC shall use all

reasonable technological measures and procedures to secure the Software Platform. The Customer acknowledges that the Servers and the Software Platform may from time to time be subject to attacks by hackers, denial of service attacks and/or malicious software attacks or infections. QTC does not warrant or represent that the Servers or the Software Platform will never be subject to a security breach. Subject to Clause 12.1 and providing that QTC complies with the requirements of this Clause 11.3, QTC shall not be liable to the Customer in respect of any loss or damage arising out of any hacker attacks, denial of service attacks or malicious software attacks or infections.

- 11.4 The Customer acknowledges that the Agresso Software will be supplied and licensed to the Customer by a third party, and accordingly QTC gives no warranties or representations in relation to the Agresso Software. Subject to Clause 12.1, QTC shall not be liable to the Customer in respect of any loss or damage arising out of any defect with the Agresso Software, any security issue with the Agresso Software or any incompatibility of the Agresso Software with any software or systems not specified as compatible in the Agreement.
- 11.5 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of 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.
- 11.6 QTC shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by QTC of Clause 11.2(c) (a "**QTC Indemnity Event**").
- 11.7 The Customer must:
 - (a) upon becoming aware of an actual or potential Consultant Indemnity Event, notify QTC;
 - (b) provide to QTC all such assistance as may be reasonably requested by QTC in relation to QTC Indemnity Event;
 - (c) allow QTC the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to QTC Indemnity Event; and
 - (d) not admit liability to any third party in connection with QTC Indemnity Event or settle any disputes or proceedings involving a third party and relating to QTC Indemnity Event without the prior written consent of QTC,

and QTC's obligation to indemnify the Customer under Clause 11.6 shall not apply unless the Customer complies with the requirements of this Clause 11.7.

12. Limitations and exclusions of liability

- 12.1 Nothing in the Agreement will:
 - (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

- (c) limit any liability of a party in any way that is not permitted under applicable law; or
 - (d) exclude any liability of a party that may not be excluded under applicable law.
- 12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in the Agreement:
 - (a) are subject to Clause 12.1; and
 - (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty (save that Clauses 12.3 to 12.8 do not affect any liability of QTC under the indemnity in Clause 11.6).
- 12.3 Neither party will be liable to the other party in respect of any loss of profits or anticipated savings.
- 12.4 QTC will not be liable to the Customer for any loss of business, contracts or commercial opportunities.
- 12.5 QTC will not be liable to the Customer for any loss of or damage to goodwill or reputation.
- 12.6 QTC will not be liable to the Customer for any losses arising out of a Force Majeure Event.
- 12.7 QTC will not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 12.8 Providing that QTC complies with Clause 11.2(c) and without affecting QTC's obligations in relation to the availability of the Hosted Service, QTC shall not be liable to the Customer in respect of any loss or damage arising from any failure or interruption of service provided by a third party internet service provider, telecommunications provider, utility provider or other infrastructure provider.
- 12.9 QTC's liability to the Customer in relation to any event or series of related events will not exceed the greater of:
 - (a) GBP 50,000; and
 - (b) an amount equal to the total paid and payable Charges during the period of 12 months preceding the commencement of the event or events.
- 12.10 QTC's aggregate liability to the Customer under the Agreement will not exceed GBP 250,000.

13. Confidentiality

- 13.1 QTC will:
 - (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 13; and

- (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least reasonable skill and care.

13.2 The Customer will:

- (a) keep confidential and not disclose the QTC Confidential Information to any person save as expressly permitted by this Clause 13; and
- (b) protect the QTC Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least reasonable skill and care.

13.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, subcontractors, insurers and professional advisers, provided that the recipient is bound in writing, or by a professional obligation, to maintain the confidentiality of the Confidential Information disclosed.

13.4 The obligations set out in this Clause 13 shall not apply to:

- (a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
- (b) Customer Confidential Information that is in possession of QTC prior to disclosure by the Customer, and QTC Confidential Information that is in possession of the Customer prior to disclosure by QTC; or
- (c) Customer Confidential Information that is received by QTC, and QTC Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information.

13.5 The restrictions set out in this Clause 13 shall not prevent any disclosure of Confidential Information that is required by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement gives to the other party prompt written notice of the disclosure requirement, where permitted by law to do so.

14. Data protection

14.1 In respect of the parties' rights and obligations under this Agreement regarding the Personal Data the parties agree that the Customer is the Data Controller and that QTC is a Data Processor (such terms as defined in the Data Protection Legislation) and both parties agree that they will perform their respective obligations under this Agreement in accordance with the Data Protection Legislation. Without prejudice to the forgoing, the Customer warrants that it has the legal right to process and have processed any Personal Data that it requires QTC to process in the process of providing the Services and that the performance by QTC of the Services in accordance with this Agreement will not breach Data Protection Legislation.

14.2 QTC warrants that it shall use reasonable endeavours to procure that any Subcontractors shall:

- i. Only process the Personal Data in order to provide the Services and then only in accordance with this Agreement and with instructions received from

- the Customer;
 - ii. Promptly and fully cooperate with and assist the Customer in relation to any reasonable request for cooperation and/or assistance and/or information relating to its processing of the Personal Data
 - iii. Ensure that the Personal Data shall only be accessible by QTC's Personnel to the extent they need to know or require access for the purposes of properly performing their duties in relation to the Services and who, where relevant, understand the confidentiality of such Personal Data (and who are contractually bound to maintain its confidentiality) and in particular QTC and any Subcontractors shall take adequate precautions to ensure that Personal Data is not used, accessed or processed in a manner incompatible with these purposes;
 - iv. to use reasonable care to ensure that it does not cause the Customer to be in breach of any part of the Data Protection Legislation whether by reason of an act or omission by it or them, or by any of its or their directors, officers staff, employees or any Subcontractors;
 - v. Not allow any third parties to access the Personal Data except to the extent that it obtains the prior written consent of the Customer to appoint a Third Party in order to assist it in delivering the Services and PROVIDED ALWAYS that the following conditions shall apply to such consent and after such consent is given;
 - a) Such Subcontractors shall not be entitled to subcontract further in whole or in part or to allow any third party access to the Personal Data;
 - b) Their appointment is otherwise on the same basis and terms as in this clause 14;
 - c) QTC shall procure compliance by the Third Party with these terms and shall be responsible for the acts and omissions of such Subcontractors.
- 14.3 QTC undertakes on a continuing basis that it shall and shall procure that the Subcontractors shall;
- i. Put in place and maintain appropriate technical and organisational measures against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to Personal Data; and
 - ii. Take reasonable steps to ensure the reliability of its/their personnel who have access to Personal Data and to ensure they are aware of QTC's or Third Party's (as appropriate) obligations in relation to Personal Data.
- 14.4 QTC warrants that it shall and shall use reasonable endeavours to procure that any Subcontractors shall fully comply at all times with the Data Protection Legislation in respect of QTC's and/or the Subcontractors' Processing of the Data (to the extent that the Data Protection Legislation applies to QTC and/or the Subcontractors who acknowledge that they are Processing the Data as Data Processors) and in particular shall ensure all data inputted or recorded is accurate and up to date (to the extent within Supplier/Third Party control) and only retained in accordance with the Customer's data retention policy.
- 14.5 The parties agree that any transfer of Personal Data by QTC outside the EEA shall take place only in accordance with the Data Protection Legislation and as agreed in advance with the Customer.

15. Termination

- 15.1 Either party may terminate the Agreement by giving at least 30 days' written notice to the other party before the Effective Term has been reached. If no notice is given by either party the contract will continue for a further 12 months with pricing updated to reflect the latest QTC price book.

- 15.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of the Agreement, and: (i) the breach is not remediable; or (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of the Agreement.
- 15.3 QTC may terminate the Agreement immediately by giving written notice to the Customer if the Customer:
- (a) fails to pay any amount due to be paid to QTC under the Agreement by the due date; and
 - (b) does not remedy such failure within 14 days following the date of issue of a written notice by QTC to the Customer requiring the Customer to do so.
- 15.4 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting, or makes or proposes to make any arrangement or composition, with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.

16. Effects of termination

- 16.1 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to issue invoices and rights to be paid) as at the date of termination.
- 16.2 Subject to Clause 16.1, upon termination all the provisions of the Agreement will cease to have effect, save that:
- (a) the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 9.6, 9.7, 10.2, 11.3, 11.4, 11.5, 12, 13, 14, 16, 17 and 19; and
 - (b) the provisions of the SLA and the Proposal expressed to survive and continue to have effect will do so (in accordance with their terms or otherwise indefinitely).
- 16.3 If the Agreement is terminated by QTC under Clause 15.1 or by the Customer under Clause 15.2 or 15.4 (but not in any other case) the Customer will:
- (a) be entitled to a refund of any Charges paid by the Customer to QTC in respect of any Services which were to be performed after the date of effective termination; and

- (b) be released from any obligation to pay any Charges otherwise payable by the Customer to QTC in respect of any Services which were to be performed after the date of effective termination,

such amount or amounts to be calculated by QTC, using any reasonable methodology.

- 16.4 Save as provided in Clause 16.3, the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to QTC.
- 16.5 Within 30 days following the termination of the Agreement, howsoever caused, QTC shall supply the Customer Data to the Customer in such format as the parties may (acting reasonably) agree.
- 16.6 QTC shall, if so requested by the Customer at any time before the expiry of the period of 30 days following the termination of the Agreement, provide to the Customer assistance in relation to the transfer of the Services to a replacement service provider appointed by the Customer. Save to the extent that the parties have agreed otherwise, QTC may charge the Customer for any Services provided under this Clause 16.6 at its standard time-based charging rates.

17. Non-solicitation

Neither party shall, without the other party's prior written consent, during the Term or for a period of 6 months after the end of the Term, directly or indirectly, either for itself or for any other person, firm or company, solicit for employment or engagement any employee or contractor of the other party involved in the performance or receipt of the Services.

18. Notices

- 18.1 Any notice given under the Agreement must be in writing (whether or not described as a "written notice" in the Agreement) and must be delivered personally, sent by courier, sent by recorded signed-for post or sent by email, in each case using the contact details of the recipient set out in the Proposal.
- 18.2 Promptly following receipt of a notice sent by email, the recipient shall give to the sender a written acknowledgement of receipt of that notice. Notices sent by email shall only be effective if and when the recipient sends this acknowledgement.
- 18.3 Subject to Clause 18.2, a notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
 - (a) if the notice is delivered personally or sent by courier, at the time of delivery; and
 - (b) if the notice is sent by post, 48 hours after posting.

19. General

- 19.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 19.2 If a Clause of the Agreement is determined by any court or other competent

authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

- 19.3 Nothing in the Agreement will constitute a legal partnership, agency relationship or contract of employment between the parties.
- 19.4 The Agreement may not be varied except by a written document signed or otherwise agreed in writing by or on behalf of each of the parties.
- 19.5 Each party hereby agrees that the other party may freely assign all of its rights and obligations under the Agreement to any Related Entity of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Subject to this, neither party may, without the prior written consent of the other party, assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 19.6 QTC may subcontract the provision of hosting services and related services to be provided to the Customer under the Agreement to any third party, providing that QTC shall use reasonable skill and care in the selection of subcontractors, and QTC shall remain responsible to the Customer for the performance of the subcontracted obligations. QTC shall not subcontract any other Services except with the prior written consent of the Customer. QTC shall obtain the prior written consent for the subcontract of hosting services, such written consent not being unreasonably withheld by the Customer.
- 19.7 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 19.8 Subject to Clause 12.1:
 - (a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) 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.
- 19.9 The Agreement will be governed by and construed in accordance with the laws of England; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.