

DATED

20[18]

Q-SOLUTION LIMITED (1)

AND

[CUSTOMER] (2)

SOFTWARE AS A SERVICE AGREEMENT

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THIS AGREEMENT dated the day of 20[17]

IS MADE BETWEEN

1. **Q-Solution Limited** incorporated and registered in England and Wales with company number 04863391 whose registered office is at 130 Shaftesbury Avenue, 2nd Floor, London, England, W1D 5EU (the “**Supplier**”).
2. **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** **[OR]** **[[INSERT DEPARTMENT/AUTHORITY NAME]** of **[INSERT DEPARTMENT/AUTHORITY ADDRESS]]** **[DN: Use the following text where the Customer is a central government body:[, acting as part of the Crown]]** (the “**Customer**”).

BACKGROUND

- A. The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet and the Government's PSN network on a pay-per-use basis.
- B. The Customer wishes to use the Supplier's service in its business operations.
- C. The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

IT IS NOW AGREED AS FOLLOWS

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Service Definition Document, as further described in clause 2.2.4.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Change of Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls**, **controlled** and the expression **change of control** shall be construed accordingly.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6 or clause 10.7.

[DRAFTING NOTE: This definition can be deleted is the customer is not a public body] **Contracting Authority:** as defined in regulation 2 of the Public Contracts Regulations 2015.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Controller: means:

- (i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, shall have the meaning given to such term in the DPA; and
- (ii) once the GDPR comes into force and becomes applicable within the United Kingdom, shall have the meaning given to the term "controller" as set out in Article 4 thereof.

Data Processor: means:

- (i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, shall have the meaning given to such term in the DPA; and
- (ii) once the GDPR comes into force and becomes applicable within the United Kingdom, shall have the meaning given to the term "processor" as set out in Article 4 thereof.

Data Protection Legislation: the DPA and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations (including amended, supplemental or replacement laws and regulations) applicable in the United Kingdom and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body, all of which are current at the time of any processing of Personal Data.

Data Subject: shall have the meaning given to such term in the DPA.

DPA: the Data Protection Act 1998 or any successor or replacement legislation, including without limitation, the GDPR when it comes into force and applies in the United Kingdom.

Effective Date: the date of this agreement.

GDPR: the EU General Data Protection Regulation 2016/679 or any successor or replacement legislation.

Initial Subscription Term: the initial term of this agreement as set out in Schedule 2.

Normal Business Hours: the hours of 8.00 am to 6.00 pm local UK time, each Business Day.

Personal Data: shall have the meaning given to such term in the DPA.

Personal Data Breach: means:

- (i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, any unauthorised or unlawful processing, use of, access to, theft of, loss of, damage to or destruction of Personal Data processed in accordance with this Contract; and
- (ii) once the GDPR comes into force and becomes applicable within the United Kingdom, anything which constitutes a "personal data breach" as set out in as set out in Article 4 thereof.

Process: shall have the meaning given to such term in the DPA and the terms "Processed" and "Processing" and their derivatives shall be construed accordingly.

Renewal Period: the period described in clause 13.1.

Service Definition Document: the document made available to the Customer by the Supplier via [] which sets out a description of the Services, including support services, and the user instructions for the Services.

Service Request: a request by the Customer to the Supplier for additional services or to amend the Services made via [INSERT EMAIL ADDRESS].

Services: [] as more particularly described in the Service Definition Document.

Software: the online software applications provided by the Supplier as part of the Services.

Subject Access Request: means

- (i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, any request from a Data Subject concerning his or her Personal Data or its existence or potential existence; and
- (ii) once the GDPR comes into force and becomes applicable within the United Kingdom, any request from such Data Subject under Chapter III Section 2 (information and Access to Data) thereof.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in Schedule 1.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Service Definition Document in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. USER SUBSCRIPTIONS

- 2.1. Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services and the Service Definition Document during the Subscription Term solely for the Customer's internal business operations.
- 2.2. In relation to the Authorised Users, the Customer undertakes that:
 - 2.2.1. the maximum number of Authorised Users that it authorises to access and use the Services and the Service Definition Document shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 2.2.2. it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or the Service Definition Document;
 - 2.2.3. each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
 - 2.2.4. it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
 - 2.2.5. it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 2.2.6. if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
 - 2.2.7. if any of the audits referred to in clause 2.2.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount

equal to such underpayment as calculated in accordance with the prices set out in Schedule 1 within 10 Business Days of the date of the relevant audit.

2.3. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 2.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2. facilitates illegal activity;
- 2.3.3. depicts sexually explicit images;
- 2.3.4. promotes unlawful violence;
- 2.3.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.3.6. is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4. The Customer shall not:

- 2.4.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or the Service Definition Document (as applicable) in any form or media or by any means; or
 - ii. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 2.4.2. access all or any part of the Services and the Service Definition Document in order to build a product or service which competes with the Services and/or the Service Definition Document; or
- 2.4.3. use the Services and/or the Service Definition Document to provide services to third parties; or
- 2.4.4. subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or the Service Definition Document available to any third party except the Authorised Users; or
- 2.4.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or the Service Definition Document, other than as provided under this clause 2.

- 2.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Service Definition Document and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6. The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer **[DRAFTING NOTE: use the following wording where the client is a public sector body: [, nor to any Contracting Authority other than the Customer]]**.

3. ADDITIONAL USER SUBSCRIPTIONS

- 3.1. Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in Schedule 1 and the Supplier shall grant access to the Services and the Service Definition Document to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within **[NUMBER]** days of its approval of the Customer's request.
- 3.3. If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within thirty (30) days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. SERVICES

- 4.1. The Supplier shall, during the Subscription Term, provide the Services and make available the Service Definition Document to the Customer on and subject to the terms of this agreement.
- 4.2. The Supplier shall use reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1. planned maintenance carried out during the maintenance window set out in the Service Definition Document in relation to the Services; and
 - 4.2.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 4.3. The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services (bronze level) during Normal Business Hours in accordance with the Service Definition Document in effect at the time that the Services are provided. The Supplier may

amend the Service Definition Document in its sole and absolute discretion from time to time.

- 4.4. The Customer may purchase enhanced support services (silver level or gold level) separately at the rates set out in Schedule 1, subject to agreement with the Supplier.

5. CUSTOMER DATA

- 5.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2. The Supplier shall follow its archiving procedures for Customer Data (available at such website address as may be notified to the Customer from time to time), as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described above. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 5.3. The Supplier shall, in providing the Services, comply with its privacy policy relating to the privacy and security of the Customer Data available at **[INSERT WEB ADDRESS]** or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 5.4. If the Supplier Processes any Personal Data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the Data Controller and the Supplier shall be a Data Processor and in any such case:
- 5.4.1. the Supplier shall not transfer any Personal Data outside of the United Kingdom without the prior written consent of the Customer;
 - 5.4.2. the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to the Supplier so that the Supplier may lawfully use, Process and transfer the Personal Data in accordance with this agreement on the Customer's behalf;
 - 5.4.3. the Customer shall ensure that the relevant third parties have been informed of, and where appropriate have given their consent to, such use, Processing, and transfer as required by all applicable Data Protection Legislation;
 - 5.4.4. the Supplier shall Process the Personal Data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time;
 - 5.4.5. each party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of the Personal Data or its accidental loss, destruction or damage;

- 5.4.6. the Supplier shall ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 5.4.7. the Supplier shall ensure at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and to enable the Customer to comply with its obligations under Article 32 of the GDPR;
 - 5.4.8. the Supplier shall not engage another sub Data Processor to undertake any Processing of any Personal Data without the prior written authorisation of the Customer. Where such authorisation is granted by the Customer, the Supplier shall ensure that it enters into a contract with that sub Data Processor on the same or equivalent terms as are set out in this clause 5.4;
 - 5.4.9. the Supplier shall assist the Customer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to Subject Access Requests, as well as providing all assistance and cooperation as the Customer may require to investigate or deal with any such Subject Access Requests;
 - 5.4.10. insofar as this is possible given the nature of Processing and the information available to the Supplier, the Supplier shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR;
 - 5.4.11. the Supplier shall notify the Customer of any Personal Data Breach within 24 hours of its occurrence, along with all supporting facts and information sufficient to allow the Customer to make any required report(s) to any relevant Data Subjects, the Information Commissioner or other regulatory or governmental body or bodies to which it is subject;
 - 5.4.12. at the choice of the Customer, the Supplier shall delete or return all the Personal Data to the Customer after the end of the provision of Services, and delete existing copies, unless the Supplier has a statutory duty to retain that Personal Data; and
 - 5.4.13. the Supplier shall make available to the Customer, following a request for such, all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
- 5.5. The provisions of this clause 5 shall apply during the continuance of the agreement and indefinitely after its termination.

6. SUPPLIER'S OBLIGATIONS

- 6.1. The Supplier shall perform the Services substantially in accordance with the Service Definition Document and with reasonable skill and care.
- 6.2. Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services by the Customer contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the

Supplier's duly authorised contractors or agents. If the Services do not conform with the provisions of clause 6.1, the Supplier will, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of clause 6.1. Notwithstanding the foregoing, the Supplier:

- 6.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Service Definition Document and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 6.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Service Definition Document may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 6.4. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7. CUSTOMER'S OBLIGATIONS

- 7.1. The Customer shall:
 - 7.1.1. provide the Supplier with:
 - i. all necessary co-operation in relation to this agreement; and
 - ii. all necessary access to such information as may be required by the Supplier,in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - 7.1.2. comply with all applicable laws and regulations with respect to its activities under this agreement;
 - 7.1.3. carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 7.1.4. ensure that the Authorised Users use the Services and the Service Definition Document in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;

- 7.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- 7.1.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 7.1.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. CHARGES AND PAYMENT

- 8.1. The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and Schedule 1 [and the support fees in accordance with paragraphs 4.3 and 4.4 and Schedule 1].
- 8.2. The Customer shall on the Effective Date provide to the Supplier approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and the Supplier shall invoice the Customer monthly in arrears for the Subscription Fees payable and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 8.3. If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
 - 8.3.1. the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 8.3.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.4. All amounts and fees stated or referred to in this agreement:
 - 8.4.1. shall be payable in pounds sterling;
 - 8.4.2. are, subject to clause 12.3.2, non-cancellable and non-refundable;
 - 8.4.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.5. If, at any time whilst using the Services, the Customer wishes to increase the amount of disk storage space available to it, the Customer shall make a Service Request. If the Service Request is accepted by the Supplier, the Supplier shall charge the Customer, and the Customer shall pay the Supplier's increased data storage fees. The Supplier's data storage fees (which form part of the Subscription Fees) current as at the Effective Date are set out in Schedule 1.

- 8.6. The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 and/or the excess storage fees payable pursuant to clause 8.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

9. PROPRIETARY RIGHTS

- 9.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Service Definition Document. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Service Definition Document.
- 9.2. The Supplier confirms that it has all the rights in relation to the Services and the Service Definition Document that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 9.3. The Customer warrants that it is not infringing any third party intellectual property rights in its use of software installed on any operating system provided by the Supplier as part of the Services.
- 9.4. The Customer shall be solely responsible and liable for ensuring that it is sufficiently and adequately licensed for any and all software applications and middleware which it runs on the Supplier's secure environment, which is delivered by the Supplier pursuant to this agreement.
- 9.5. The Customer shall provide to the Supplier within five (5) Business Days of any and all requests from the Supplier a full and accurate list of all software applications and middleware which the Customer is running and has run on the Supplier's secure environment. Failure by the Customer to comply with such request shall constitute a material breach of this agreement.

10. CONFIDENTIALITY

- 10.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 10.1.2. was in the other party's lawful possession before the disclosure;
 - 10.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 10.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 10.2. Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information

available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.7. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.8. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9. The above provisions of this clause 10 shall survive termination of this agreement, however arising.

11. INDEMNITY

- 11.1. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or the Service Definition Document, provided that:
 - 11.1.1. the Customer is given prompt notice of any such claim;
 - 11.1.2. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 11.1.3. the Customer is given sole authority to defend or settle the claim.
- 11.2. The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or the Service Definition Document infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 11.2.1. the Supplier is given prompt notice of any such claim;

- 11.2.2. the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 11.2.3. the Supplier is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 11.4.1. a modification of the Services or the Service Definition Document by anyone other than the Supplier; or
 - 11.4.2. the Customer's use of the Services or the Service Definition Document in a manner contrary to the instructions given to the Customer by the Supplier; or
 - 11.4.3. the Customer's use of the Services or the Service Definition Document after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5. The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. LIMITATION OF LIABILITY

- 12.1. Except as expressly and specifically provided in this agreement:
 - 12.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Service Definition Document by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - 12.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - 12.1.3. the Services and the Service Definition Document are provided to the Customer on an "as is" basis.
- 12.2. Nothing in this agreement excludes the liability of the Supplier:
 - 12.2.1. for death or personal injury caused by the Supplier's negligence; or
 - 12.2.2. for fraud or fraudulent misrepresentation.
- 12.3. Subject to clause 12.1 and clause 12.2:

- 12.3.1. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 12.3.2. the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the twelve (12) months immediately preceding the date on which the claim arose.

13. TERM AND TERMINATION

- 13.1. This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of one day (each a **Renewal Period**), unless:

- 13.1.1. after at least fourteen (14) calendar days have passed since the Effective Date, either party notifies the other party of termination, in writing, at least 24 hours before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 13.1.2. otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 13.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- 13.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
- 13.2.2. the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 13.2.3. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 13.2.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- 13.2.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.2.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 13.2.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 13.2.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
 - 13.2.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.4 to clause 13.2.10 (inclusive);
 - 13.2.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.2.13. there is a Change of Control of the other party.
- 13.3. On termination of this agreement for any reason:
- 13.3.1. all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Service Definition Document;
 - 13.3.2. each party shall return and make no further use of any equipment, property, Service Definition Document and other items (and all copies of them) belonging to the other party;
 - 13.3.3. the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges

outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

- 13.3.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. FORCE MAJEURE

- 14.1. The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15. CONFLICT

- 15.1. If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

16. VARIATION

- 16.1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER

- 17.1. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. RIGHTS AND REMEDIES

- 18.1. Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. SEVERANCE

- 19.1. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 19.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. ENTIRE AGREEMENT

- 20.1. 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.
- 20.2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

21. ASSIGNMENT

- 21.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 21.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22. NO PARTNERSHIP OR AGENCY

- 22.1. Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. THIRD PARTY RIGHTS

- 23.1. This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. NOTICES

- 24.1. Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out below:

Supplier Email Address	Customer Email Address
Helpdesk.taas@q-solution.co.uk	[REDACTED]

- 24.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9 am on the first Business Day following

delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.

25. GOVERNING LAW

- 25.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. JURISDICTION

- 26.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF
DIRECTOR] for and on behalf
of Q-Solution Limited

.....

Director

Signed by [NAME OF
DIRECTOR] for and on behalf
of [NAME OF CUSTOMER]

.....

Director

SCHEDULE 1: SUBSCRIPTION FEES

[Insert the Pricing Model]

SCHEDULE 2: SUBSCRIPTION TERM

- 1.** The Initial Subscription Term shall be for a minimum of fourteen (14) calendar days. For the duration of the Subscription Term the Supplier shall supply a minimum of ten (10) servers.