

**1. ENTIRE AGREEMENT**

- 1.1. This Agreement sets out all the terms agreed between the parties relating to the subject matter of this Agreement. It takes the place of all previous negotiations, understandings and representations.
- 1.2. Neither of the parties shall be bound by, or liable to the other party for, any representation, promise or inducement (other than fraudulent misrepresentations) made by it or any agent or person on its behalf which is not expressly contained in this Agreement.
- 1.3. The Services shall be provided to you in accordance with the terms of this Agreement.
- 1.4. Where you also wish to use the Licensed Products, your use will be subject to both the terms of this Agreement and to the QAS Licence Terms and Conditions.

**2. OBLIGATIONS**

- 2.1. We shall provide the Services:
  - 2.1.1. using all reasonable care and skill;
  - 2.1.2. in all material respects in accordance with the Professional Services Agreement
- 2.2. We shall use all reasonable endeavours to comply with any written timetable for delivery of the Services agreed by the parties.
- 2.3. You agree to:
  - 2.3.1. comply with our reasonable written instructions and directions in relation to the use of the Services (including in relation to information security), and shall only use the Services for the Permitted Purpose;
  - 2.3.2. satisfy the conditions (if any) to be fulfilled by you to receive and use the Services as set out in the Professional Services Agreement;
  - 2.3.3. not sell, deal, transfer, or otherwise make available any of the Services to any third party for any purposes or use the Services for the benefit of any third party;
  - 2.3.4. not copy, adapt, alter, modify or otherwise interfere with the Services
- 2.4. Each party agrees that in connection with the provision or use of the Services (as appropriate), it will at all times comply with all applicable legislation, regulations, and other rules having equivalent force including the DPA and (to the extent relevant) the data protection principles referred to in the DPA. You shall ensure that all individuals whose personal data (as defined in the DPA) is to be processed by us under this Agreement have given consent (to the extent required by the DPA) to such processing.

**3. WARRANTIES**

- 3.1. Each party warrants that it has the full power and authority to enter into this Agreement.
- 3.2. Except as this Agreement expressly provides otherwise, we give no condition, warranty, undertaking or representation in relation to the suitability or fitness for any particular purpose of the Services.
- 3.3. We give no condition, warranty or undertaking as to the benefits which may accrue, including profitability, revenue or pricing benefits, from your use of the Services.
- 3.4. The warranties expressly set out in this Agreement are the only warranties we give to you in respect of the subject matter of this Agreement. All warranties, representations or terms of equivalent effect which might be implied into this Agreement by law are excluded to the fullest extent permitted by law.

**4. CONFIDENTIALITY**

- 4.1. Each party shall, in respect of the Confidential Information for which it is the recipient:
  - 4.1.1. keep the Confidential Information strictly confidential and not use or disclose to any person any part of such Confidential Information except as required for the performance of the recipient's obligations under this Agreement;
  - 4.1.2. take all reasonable steps to prevent unauthorised access to the Confidential Information;
- 4.2. Each party may disclose Confidential Information to, and allow its use in accordance with this Agreement by, the following provided that it shall procure that any party to whom it discloses Confidential Information shall observe the restrictions in this Clause 4:
  - 4.2.1. employees and officers of the recipient who require it for the recipient to perform its obligations under this Agreement;
  - 4.2.2. the recipient's auditors and professional advisors solely for the purposes of providing professional advice;
  - 4.2.3. if we are the recipient, our agents and sub-contractors who are involved in performing our obligations under this Agreement, and any of our group companies;
  - 4.2.4. if we are the recipient, the ICO pursuant to any requirement to do so (whether legally binding or otherwise), and any person as permitted by the DPA or any other statutory provision.
- 4.3. The restrictions in Clause 4.1 do not apply to any information to the extent that it:
  - 4.3.1. is or comes within the public domain other than through a breach of Clause 4.1; or
  - 4.3.2. is in the recipient's possession (with full right to disclose) before receiving it from the other party; or
  - 4.3.3. is lawfully received from a third party (with full right to disclose); or
  - 4.3.4. is independently developed by the recipient without access to or use of the Confidential Information; or
  - 4.3.5. is required to be disclosed by law or by a court of competent jurisdiction.

**5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1. All Intellectual Property Rights in any Customer Data and in any other materials that you provide to us under this Agreement will remain vested in you.
- 5.2. All Intellectual Property Rights used or created in the provision of the Services will remain vested in us (or in our relevant licensors) .
- 5.3. You grant us a perpetual, royalty free, non-exclusive, non-transferable licence to use (and copy) the Customer Data in order to perform this Agreement and for other agreed purposes and in order for us to comply with any requests made to us under statute. You agree that our use and/or processing of the Customer Data may include transfer to other companies or branches within our group world-wide and/or its storage in a centralised database.

**6. THIRD PARTY CLAIMS**

- 6.1. If as a result of your default (including breach of this Agreement) a third party makes a claim against us arising from the processing of personal data (as defined by the DPA) or the use of any data (including Customer Data), you shall reimburse us for any and all losses that we suffer or incur.

**7. LIMITS ON LIABILITY**

- 7.1. Our liability to you (whether in contract, negligence, breach of statutory duty or under any indemnity or otherwise) in respect of any claims for the damage to or loss of tangible property (excluding claims for loss or corruption of, or damage to, data contained on any tangible media) shall be limited to £1 million per claim or series of claims arising from any one incident.
- 7.2. Except as provided in Clause 7.1, and subject to Clause 7.4, our liability to you in respect of any claims (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) brought under or in connection with this Agreement shall be limited as follows:
  - 7.2.1. for all claims arising in the Initial Licence Period, liability shall be limited in aggregate to the Initial Licence Fee;
  - 7.2.2. for all claims arising in any subsequent year, liability shall be limited in aggregate to the Renewal Fee (excluding VAT)

- 7.3. Subject to Clause 7.4, we shall not be liable (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) for:
- 7.3.1. third party claims against you for damages.
  - 7.3.2. any indirect or consequential loss.
  - 7.3.3. the following types of financial loss; loss of profits; loss of earnings; loss of business or goodwill; business interruption; even if we had notice of the possibility of you incurring such losses.
  - 7.3.4. the following types of anticipated or incidental losses; loss of anticipated savings; increase in bad debt; loss of sales or revenue; failure to reduce bad debt; reduction in the value of an asset; even if we had notice of the possibility of you incurring such losses.

7.4. We do not exclude or limit our liability to you:

- 7.4.1. for breach of our obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
  - 7.4.2. for personal injury or death resulting from our negligence or that of its employees, agents and/or sub-contractors;
  - 7.4.3. for any matter which it would be illegal for us to exclude and/or limit, or attempt to exclude and/or limit, its liability; or
  - 7.4.4. for our fraud,
- and nothing in this Agreement shall be construed as excluding or limiting such liability.

## 8. PAYMENT AND INVOICING

- 8.1. You shall pay the fees set out and/or referred to in the Order Confirmation. All sums referred to in this Agreement are exclusive of VAT.
- 8.2. We shall invoice you either on receipt of your signature on the Professional Services Agreement or on our despatch of your Order Confirmation for the Services, whichever shall be the sooner. You must pay all relevant fees to us (including any tax or duty component) within thirty (30) days of the date of our invoice to you whether or not the Services have been performed. If you fail to pay the relevant fee by the due date, we shall be entitled to charge interest on the overdue amount at three (3) percent above the Minimum Lending Rate from time to time of the Bank of England from the due date up to the date of actual payment (whether before or after any court judgement).
- 8.3. We may increase the Renewal Fee in respect of an Additional Term by giving you notice in writing at least sixty (60) days prior to the commencement of that Additional Term:
- 8.3.1. By an amount which represents the proportionate increase (if any) in the Retail Prices Index maintained by the Government of the United Kingdom during the most recent period twelve months (for which the index provides figures) prior to the date of the notice; and/or
  - 8.3.2. By an amount considered by us to be reasonable if we determine that the existing Renewal Fee does not give us an appropriate return when compared to returns from other of our customers, but in no event will any such increase be greater than ten (10) percent of the previous Renewal Fee

## 9. FORCE MAJEURE

- 9.1. Neither party will be liable for any delay or failure in the performance of its contractual obligations caused by Force Majeure, provided that the party claiming Force Majeure promptly notifies the other party of the Force Majeure.
- 9.2. If Force Majeure persists for a period of 28 days or more, the party not claiming Force Majeure may give notice to the other to terminate this Agreement with effect from a date specified in the notice without penalty or other liability (except for any liability on you to pay accrued fees).

## 10. TERMINATION

- 10.1. This Agreement shall commence on the Effective Date and subject to Clause 9.2 and 10.2, shall continue for the Initial Licence Period. Where a Renewal Fee is stated on the Order Confirmation, subject to Clause 9.2, 10.2 and 10.3, this Agreement will be automatically extended for an Additional Term (and subsequent Additional Terms).
- 10.2. Either party shall be entitled to terminate this Agreement immediately by serving written notice on the other party:
- 10.2.1. if the other party commits a material breach of an obligation under this Agreement which is not capable of remedy;
  - 10.2.2. if the other party commits a material breach of an obligation under this Agreement which is not remedied within 30 days after receipt of a notice from the party not in breach specifying the breach, requiring its remedy and making clear that failure to remedy may result in termination;
  - 10.2.3. if the other party has passed a resolution for its winding up (save for a voluntary winding-up for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up (save for a voluntary winding-up for the purpose of a voluntary reconstruction or amalgamation), is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person, or is the subject of a notice to strike off the register at Companies House, or is dissolved or declared bankrupt, or has a receiver, administrator or administrative receiver appointed over all or part of its assets, or enters into an arrangement with its creditors, or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, or ceases to trade or takes or suffers any similar action.
- 10.3. You shall be entitled to terminate this Agreement by giving us written notice at least thirty (30) days prior to the next Renewal Date, in which case such termination will be effective on the next Renewal Date.
- 10.4. You acknowledge that where a number of days of consultancy or training in respect of either the Initial Licence Period or a subsequent Additional Term is specified in the Order Confirmation, you must use these days during the relevant annual period. You will not be eligible for a refund of any portion of the relevant Initial Licence Fee or Renewal Fee where you elect not use these days during the relevant annual period.
- 10.5. Termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party: which have accrued before termination; or which are intended to continue to have effect beyond termination.

## 11. PUBLICITY

Upon successful completion of the Services and at our reasonable request, you agree to:

- (a) participate in a case study describing in general terms the Services you received under this agreement, and to allow us to publicly issue this case study in agreed formats and media types;
- (b) permit us to issue and publish a press release containing a quotation from one of your representatives announcing your purchase of the Services and the general context of their intended use;
- (c) allow us to use your name and logo on our website and in marketing and advertising materials subject to compliance with any brand guidelines or other specifications regarding logo usage that you may provide to us

subject always to your final approval before publication.

## 12. GENERAL PROVISIONS

- 12.1. In the event of any conflict arising between the terms of this document and the Professional Services Agreement, the Professional Services Agreement shall prevail.
- 12.2. Except as provided in Clause 12.3, neither party may transfer or grant any of its rights under this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

- 12.3. We shall be entitled to sub-contract any or all of our obligations under this Agreement but we shall be responsible for the acts and omissions of any sub-contractor to the same extent as if we had carried out the obligations under this Agreement.
- 12.4. If either party fails to exercise a right or remedy that it has or which arises in relation to this Agreement, such failure shall not prevent that party from exercising that right or remedy subsequently in respect of that or any other incident.
- 12.5. A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed by an authorised representative of the party who is waiving the breach or provision.
- 12.6. If any part of this Agreement is found to be invalid or unenforceable by any Court, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.
- 12.7. English law shall govern this Agreement. The English courts shall have exclusive jurisdiction to settle any disagreement that may arise out of, under, or in connection with this Agreement.
- 12.8. Variations of this Agreement shall be in writing (and not in electronic form) and signed by the parties' authorised signatories.
- 12.9. Persons who are not a party to this Agreement shall not have any rights under this Agreement.
- 12.10. Any notices except for the service of Court proceedings shall be in writing and shall be delivered personally or sent by special delivery post (or equivalent service) or fax to the addresses of each party as set out on the front page of the Schedule or as otherwise notified in accordance with the provisions of clause 12.11.
- 12.11. Notices shall be deemed to have been duly given: if delivered personally, upon delivery; if sent by post, two clear days after the date of posting; if sent by fax, when transmitted provided that a confirmatory copy is sent by special delivery by the end of the next business day after transmission.
- 12.12. In this Agreement:
- 12.11.1 references to clauses and schedules are to the Clauses of and the Schedule to this Agreement;
  - 12.11.2 headings are for ease of reference only;
  - 12.11.3 references to any gender includes any other gender and the singular includes the plural and vice versa;
  - 12.11.4 the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
  - 12.11.5 the words "including", "include", or "includes" shall be deemed to be followed by the words "without limitation" unless the context otherwise requires;
  - 12.11.6 words beginning with capital letters are intended to have the meanings given to them in this Agreement.
13. **DEFINITIONS**
- 13.1. "Additional Term" means a twelve calendar month period from the Effective Date and subsequent anniversaries.
- 13.2. "Agreement" means the terms and conditions of this document (including any document incorporated by specific reference), the Professional Services Agreement and the Order Confirmation.
- 13.3. "Customer Data" means data or information provided by you in connection with this Agreement, including personal data such as an individual's contact details.
- 13.4. "Confidential Information" means any and all information relating to the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of the parties and/or to their customers, suppliers, clients or group companies in or any medium or format and also includes the methods, techniques, know how and ideas used or learned by us in providing the Services.
- 13.5. "DPA" means the Data Protection Act 1998 (including any modification or re-enactment of it).
- 13.6. "Effective Date" means the date of commencement of your right to receive the Services, as specified in the Order Confirmation.
- 13.7. "Force Majeure" means any act of government or state, civil commotion, terrorism, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of payment systems, damage to or failure of any third party's computer equipment, software or telecommunications systems used to provide the Services or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations.
- 13.8. "ICO" means the Information Commissioner's Office (or any other title under which such office subsequently operates);
- 13.9. "Initial Licence Fee" means the fee specified as such in the Order Confirmation.
- 13.10. "Initial Licence Period" means the period specified as such in the Order Confirmation (if any).
- 13.11. "Intellectual Property Rights" means copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same.
- 13.12. "Licensed Products" means the software purchased by you in addition to the Services, the terms and conditions of such purchase being governed by the QAS Licence Terms and Conditions.
- 13.13. "Order Confirmation" means the completed form entitled "Software Order Confirmation".
- 13.14. "Permitted Purpose" unless otherwise stated in the Professional Services Agreement means your internal business purposes and not in any event for the provision of any bureau services to any third parties.
- 13.15. "Professional Services Agreement" means the document of that name which sets out details of the Services (as such document is updated by agreement between the parties from time to time).
- 13.16. "Renewal Date" means the date of expiry of the Initial Licence Period or of any subsequent Additional Term
- 13.17. "Renewal Fee" means the fee specified as such in the Order Confirmation.
- 13.18. "Services" means the services as specified in the Statement of Work forming part of the Professional Services Agreement.
- 13.19. "Statement of Work" means the schedule attached to the Professional Services Agreement.
- 13.20. "we" or "us" or "our" means the QAS company specified in the Order Confirmation.
- 13.21. "you" or "your" means the name of the customer specified in the Order Confirmation