

## GENERAL TERMS & CONDITIONS

### 1. GENERAL

1.1 In these Conditions The following expressions shall have the following meanings:

**Acceptable Use Policy:** the acceptable use policy agreed between the Customer and Qolcom or, if none is agreed, Qolcom's acceptable use policy at Schedule 1 as updated and amended from time to time.

**Applicable Data Protection Laws** means:

To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which Qolcom is subject, which relates to the protection of personal data.

**Qolcom:** means Qolcom Limited registered in England and Wales with company number 04049238 and any subsidiary or holding company or associate (as defined in the Companies Act 2006 as amended) of the said company.

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

**Customer:** the individual firm company or other party from whom an order to supply Goods is received by Qolcom.

**Charges:** the charges payable to Qolcom, as described in the relevant Order.

**Conditions:** these general terms and conditions of sale together with any applicable Special Conditions.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Contract which information is either labelled as such or else which should reasonably to be considered as confidential because of its nature and the manner of its disclosure. The term "Confidential Information" does not include any information that: is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause); or was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party; or was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality Contract with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or was known to the receiving party before the information was disclosed to it by the disclosing party; or the parties agree in writing is not confidential or may be disclosed; or is developed by or for the receiving party independently of the information disclosed by the disclosing party.

**Contract:** the contract between Qolcom and the Customer for the supply of Goods, Software and/or Services in accordance with the Conditions.

**Customer Data:** any information which is provided by Customer to Qolcom as part of Customer's use of the Service, including any information derived from such information.

**Data Controller, Data Processor, Personal Data and Data Subject** have the meanings in the Applicable Data Protection Laws.

**Date of Delivery:** the date on which the delivery of the Goods takes place pursuant to Condition 5.

**Direct Third-Party Services:** the services of third parties and/or software programs proprietary to third parties, which are to be provided to the Customer without modification.

**DOA Period:** the period during which a third-party manufacturer will offer to automatically replace defective Goods without exercising any option to repair them

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**Goods:** the goods, hardware and other products which Qolcom is to supply under the Contract as stated in the Order (but excluding Software).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks, trade names, rights in domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Managed Services:** the managed and support and maintenance services supplied by Qolcom to the Customer if set out in the Order or Scope of Works.

**Order:** the Customer's order for the supply of Goods, Software and/or Services set out in the Customer's order form, or the Customer's written acceptance of Qolcom's quotation or Scope of Works.

**Permitted Purpose:** the purpose of exercising or performing a party's rights and obligations under this Contract.

**Professional Services:** the consultancy and/or design services supplied by Qolcom to the Customer if set out in the Order or Scope of Works.

**Representatives:** a party's employees, officers, representatives, advisers or subcontractors.

**Scope of Works:** the detailed plan describing the project and setting out the estimated timetable and responsibilities of each of the parties for, or in connection with, the provision of the Services by Qolcom in accordance with the Contract.

**Services:** the services, supplied by Qolcom to the Customer as set out in the Order and detailed in any Scope of Works, including any Professional Services and Managed Services.

**Software:** any software programs (including any software to be provided as a service) which are to be provided to the Customer without modification under an Order.

**Special Conditions:** the additional terms and conditions which apply to the Contract as set out in the Scope of Works.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

## 1.2 Interpretation:

- a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b) A reference to a party includes its successors and permitted assigns.
- c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- d) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- e) A reference to writing includes email
- f) Words importing the singular number shall include the plural and vice versa, words importing one gender shall include all genders, and words importing persons shall include bodies, corporate, unincorporated associations and partnerships.

1.3 If there is any conflict or ambiguity between these general terms and conditions of sale and any of the applicable Special Conditions, the Special Conditions shall have priority.

## 2. ORDERS PROCESS

2.1 The Customer may order Goods, Software or Services by placing an Order with Qolcom. The Order shall set out the details of Goods, Software and/or Services to be provided, the Charges and the Special Conditions which shall apply.

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services or in accordance with these Conditions. Notwithstanding that Qolcom may have given a detailed quotation or estimate either verbally or in writing no Order shall be binding on Qolcom unless and until it has been accepted in writing by Qolcom.

2.3 These Conditions and the applicable Special Conditions shall:

- a) apply to and be incorporated in the Contract; and
- b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.4 No variation of the Contract by the Customer shall be binding upon Qolcom unless made in writing and signed on behalf of Qolcom.

2.5 Qolcom may vary these terms and conditions from time to time on giving the Customer at least 30 days' notice in writing provided that any variation required by applicable law will be effective immediately. The Customer's continued use of the Services, Goods and/or Software will constitute the Customer's acceptance of the variation.

2.6 To enable Qolcom to pursue its policy of continuous improvement of its products Qolcom reserves the right to amend the specification of the Goods, Software and/or Services from time to time whether before or after the making of the Contract.

### **3. DELIVERY**

3.1 Delivery of Goods shall be deemed to be effected by Qolcom at the following times:

- a) Where Goods are delivered by Qolcom, when the same arrive prior to unloading at the Customer's premises or at the premises nominated by the Customer or at the nearest accessible road point to such premises.
- b) Where Goods are delivered by an independent carrier, at the time of unloading at the Customer's premises or at the premises nominated by the Customer or at the nearest accessible road point to such premises
- c) Where Goods are to be collected by or on behalf of the Customer by its servants or agents, when the same are collected or when Qolcom notifies the Customer that the same are ready for collection, whichever is earlier.

3.2 Whilst Qolcom will make every reasonable effort to complete the Contract by the date(s) therein specified for delivery of Goods such date(s) are estimates only and time for performance of the Contract by Qolcom shall not be of the essence of the Contract, Qolcom's failure to so deliver the Goods by the due date(s) shall not constitute a breach of Contract and Qolcom shall not in any circumstances be responsible for any direct or consequential loss or damage of any kind whatsoever resulting therefrom.

3.3 Qolcom may wholly or partly suspend deliveries of Goods, and the Customer shall accept late delivery of such Goods unless the Customer has cancelled the Contract in accordance with the provisions of Condition 16.

### **4. QUANTITIES INSTALMENTS AND STORAGE**

4.1 Where Goods are delivered by instalments each instalment shall be deemed to be sold under a separate Contract and no default in respect of any one instalment shall affect due performance of the Contract as regards other instalments.

4.2 Qolcom will endeavour to deliver the quantity of Goods ordered. If there is a surplus or shortage of Goods which is so slight that it would be unreasonable for the Customer to reject delivery of them the Customer shall be deemed to have accepted the Goods and shall pay for the actual quantity delivered.

4.3 The Customer shall indemnify and keep indemnified Qolcom in full against all costs, losses, damages and expenses whatsoever arising in connection with the storage of the Goods if Qolcom shall be prevented from delivering any of the Goods in accordance with the Contract as a result of delay or default on the part of the Customer or any reason beyond Qolcom's reasonable control and such costs, losses, damages and expenses will be added to and form part of the Charges of the Goods. Qolcom shall be entitled in its absolute discretion and without giving prior notice to the Customer at the expiration of 3 months to sell or otherwise dispose of Goods kept in storage.

### **5. RISK AND TITLE TO GOODS**

5.1 The Goods are at the risk of the Customer from the time of delivery.

5.2 Ownership of the Goods shall not pass to the Customer until Qolcom has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to Qolcom from the Customer on any account.

5.3 Until ownership of the Goods has passed to the Customer, the Customer must:

- a) hold the Goods on a fiduciary basis as Qolcom's bailee;

- b) store the Goods (at no cost to Qolcom) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Qolcom's property;
- c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- d) maintain the Goods in satisfactory condition and keep them insured on Qolcom's behalf for their full price against all risks to the reasonable satisfaction of Qolcom. On request the Customer shall produce the policy of insurance to Qolcom; and
- e) hold the proceeds of any insurance in respect of the Goods on trust for Qolcom and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

5.4 The Customer's right to possession of the Goods before ownership has passed shall terminate immediately if:

- a) Any of the events in conditions 16.1 1.1a) to 16.1 1.1d) takes place in connection with the Customer; or
- b) Qolcom reasonably apprehends that any of the circumstances in in condition 16.1 1.1a) to 16.1 1.1d) is about to occur in relation to the Customer and notifies the Customer accordingly; or
- c) if the Customer commits a material breach of any of the terms of the Contract or any other contract between the Customer and Qolcom fails to remedy the same within 7 days of being notified of the breach;
- d) the Customer encumbers or in any way charges any of the Goods; or
- e) anything analogous to the foregoing occurs in any other jurisdiction.

5.5 Qolcom shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Qolcom.

5.6 The Customer grants Qolcom, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

## 6. USE OF SOFTWARE

6.1 The Customer shall use the Services in accordance with the Acceptable Use Policy, as varied from time to time and notified to the Customer.

6.2 The Customer shall indemnify and hold Qolcom harmless from any losses, damages costs and expenses suffered or incurred as a result of the Customer's breach of the Acceptable Use Policy.

6.3 The Customer shall not provide the Services to third parties without the prior written consent of Qolcom.

6.4 Qolcom shall procure the provision of the Direct Third Party Services to the Customer under the standard terms provided by the relevant third parties, copies of which shall be annexed to this Contract or sent separately to the Customer by the third party and/or presented to the Customer's IT administrator electronically upon first log-in and the Customer agrees to be bound by such terms. The Customer acknowledges that it will have a direct relationship with those third parties and that, while Qolcom may provide the Services in relation to or supplemental to such Direct Third-Party Services, if there is any inconsistency between the terms of this Agreement and the third party's terms, with respect to the Direct Third-Party Services the latter will prevail.

6.5 The Customer acknowledges that Qolcom is reselling the Software from third party licensors and that all intellectual property rights in the Software are, and shall remain, the property of the third-party licensors.

6.6 The Customer's rights to use the Software is subject to the standard licensing terms of the third-party licensors. The Customer agrees to comply with such third-party licensing terms and understands the Customer acquires no rights in or to the Software other than those expressly granted in those licensing terms. Where Qolcom pre-installs the Software on the Goods or sets up an online subscription to the Software, the Customer acknowledges that it is bound by the licensing terms for such Software and where such pre-installation or set up involves Qolcom accepting the terms, Qolcom does so on behalf of the Customer.

6.7 The Customer shall acquire ownership of any physical media containing the Software in accordance with Condition 5.

## 7. CLAIMS FOR DAMAGE IN TRANSIT/DEFECTS

7.1 The Customer shall inspect the Goods within 2 days of the Date of Delivery and whether or not the Customer carries out such obligation to inspect, subject to Condition 8, no claims for non-delivery, shortages in quantity of units delivered, defective Goods, partial loss or damage to Goods will be accepted by Qolcom unless:

- a) the Customer informs the delivery carrier of any Goods which are damaged upon arrival or if there are Goods shortages and procures the carrier notes such damage or shortages on the delivery information;
- b) the Customer notifies Qolcom in writing within 2 days after the Date of Delivery (in the case of partial loss, damage or defective Goods) or 5 days after the date of the invoice (in the case of non-delivery);
- c) the Goods in respect of which a claim is made together with the packaging are preserved intact as received and at the Customer's risk for a period of 21 days from notification of any such claim and
- d) the Customer permits Qolcom or its servants or agents full and free right of access to inspect the Goods and investigate the claim.

7.2 If the Customer fails to give the appropriate notice as specified in Condition 7.1 the Customer's claim will be deemed to have been waived and will be absolutely barred.

7.3 Section 35A of the Sale of Goods Act 1979 shall not apply.

## 8. RETURNS

If the Customer wishes to return any non-defective Goods, a returns material authorisation number (RMA) must be requested from Qolcom within 7 days of receipt of the Goods and prior to returning any item. Once Qolcom have issued an RMA, Goods must be returned within a 5 day period. All returned Goods must be unopened in the original manufacturer's packaging complete with accessories and manuals. Goods must be in pristine, resalable condition with no markings on the packaging. If Goods are ordered in error or are no longer required, the Goods are charged at the full invoice amount. However, Qolcom may at its discretion accept the Goods back subject to a restocking fee. A minimum charge of £20.00 will apply, plus delivery costs.

## 9. WARRANTY

9.1 Where Goods are supplied by Qolcom but manufactured by a third party, Qolcom shall:

- a) where the Customer notifies Qolcom of a defect in such Goods within the relevant manufacturer's DOA Period (if any), assist the Customer with obtaining replacement Goods from such manufacturer; and
- b) use its best endeavours to pass on to the Customer any warranties or guarantees of such Goods which Qolcom has under contract with that third party.



- 9.2 The Customer is advised to view the brief details of such warranty and/or guarantee appearing in the specification section of the description of the Goods on the relevant manufacturer's website for more detail prior to placing its order for such Goods. Qolcom shall have no liability in respect of defects in the Goods which will result from the manufacture, design, materials or workmanship of that third party and except as aforesaid any warranties, conditions or undertakings (whether express or implied by statute, common law or otherwise) howsoever in respect of such Goods are, to the extent permitted by law, hereby expressly excluded.
- 9.3 In substitution of all and any other rights which the Customer might or would have against Qolcom but for these Conditions and subject to Conditions 7.1 and 9.1 Qolcom shall make good by replacement or, at its option, repair any failure (fair wear and tear excepted) in the Goods which, under conditions of proper use and maintenance, results from defects in Qolcom's manufacture, design, materials or workmanship and which appears not later than 12 months after the Date of Delivery.
- 9.4 Notwithstanding the provisions of Conditions 9.1 and 9.2, in the case of a claim falling within Condition 9.2, Qolcom reserves the right at its sole discretion to credit the Customer in full the price paid by the Customer to Qolcom in lieu of repair or replacement of the relevant Goods.
- 9.5 Qolcom's liability under this Condition shall automatically cease if
- a) the Customer is in breach of this, or any other contract made with Qolcom: or
  - b) Qolcom or its servants or agents are denied full and free right of access to the allegedly defective Goods; or
  - c) the Goods have been treated improperly or in a way which has contributed to the defect (whether before or after a defect is detected).
- 9.6 The warranty set out in Condition 9.2 shall be in lieu of any warranties conditions or undertakings whether express or implied by statute common law or otherwise howsoever which warranties, conditions and undertakings are hereby expressly excluded except that such exclusions will not apply to any implied condition that Qolcom has or will have the right to sell the Goods when the property is to pass.

## 10. DESIGNS AND INTELLECTUAL PROPERTY

- 10.1 Unless otherwise agreed in writing, Qolcom will be the sole owner of the copyright and all other Intellectual Property Rights in all documents and drawings made or produced by it in preparing a quotation for the Customer or in the course of providing the Goods, Software and/or Services to the Customer.
- 10.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods, Software and Services are and shall remain the sole property of Qolcom or the third-party rights owner. Qolcom licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services as is envisaged by the parties. If Qolcom terminates the Contract this licence will automatically terminate.
- 10.3 The Customer acknowledges that the Customer's use of rights in Some Software may be conditional on Qolcom obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Qolcom to license such rights to the Customer.

## 11. CHANGES

- 11.1 If either party wishes to change the scope of a Service (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.

11.2 If either party requests a change to the scope or execution of the Services, Qolcom shall, within a reasonable time, provide a written estimate to the Customer of:

- a) the likely time required to implement the change;
- b) any variations to the Charges arising from the change;
- c) the likely effect of the change on the Scope of Works if applicable; and
- d) any other impact of the change on the terms of this Contract.

11.3 If Qolcom requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

11.4 If the Customer wishes Qolcom to proceed with the change, Qolcom has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Scope of Works and any other relevant terms of this Contract to take account of the change.

## 12. CUSTOMER'S OBLIGATIONS

12.1 The Customer shall provide Qolcom with:

- a) all necessary co-operation in relation to the Contract; and
- b) all necessary access to such information as may be required by Qolcom;
- c) in order to provide the Goods, Software and/or Services, including but not limited to Customer Data, security access information and software interfaces, to the Customer's other business applications;
- d) provide such personnel assistance and access to and use of its premises, facilities and utilities as may be reasonably requested by Qolcom from time to time;
- e) maintain all relevant Customer equipment in good working order and suitable for Qolcom to provide the Services;
- f) comply with all applicable laws and regulations with respect to its activities under this Contract, including those set out in clause 14 below;
- g) carry out all other Customer responsibilities set out in this Contract or in any of the schedules in a timely and efficient manner.

12.2 In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Qolcom may:

- a) adjust any timetable or delivery schedule as reasonably necessary; and
- b) ensure the Customer has and maintains the right in any equipment or software that it makes available to Qolcom as part of the Services, whether the same are stored on the Customer's or Qolcom's premises.

## 13. PAYMENT

13.1 The Customer shall pay the Charges for the Goods, Software and Services in the amounts and at the times set out in the relevant Order or, if no Charges are specified, as calculated in Qolcom's price list currently in force.

13.2 The Customer may apply to Qolcom for credit arrangement by completing a formal credit application to be completed by an authorised company representative. The credit application form can be found at [www.Qolcom.com/gb](http://www.Qolcom.com/gb). By completing and submitting the application to Qolcom the Customer accepts and agrees that Qolcom may undertake various credit checks on the Customer. Qolcom will inform the Customer of the outcome of the application and if



a credit facility is granted to the Customer, the Customer hereby accepts and agrees to settle of such credit facility shall be made within 30 days of Qolcom's invoice. Qolcom has no obligation to offer any credit facility to the Customer and any credit account is granted only on the completion of checks and references to Qolcom's satisfaction. Any credit account offered will be under continued review and Qolcom may reduce, amend or withdraw a Customer's credit facility at any time.

- 13.3 All amounts and Charges stated or referred to in this Contract are exclusive of value added tax, which shall be added to Qolcom's invoice(s) at the appropriate rate.
- 13.4 The Customer shall pay the Charges by the date specified in Qolcom's invoice or if no date is specified, 30 days after the invoice date.
- 13.5 Time of payment by the Customer shall be of the essence in this Contract.
- 13.6 Qolcom shall have the right to alter the rates of the Charges as stated in Qolcom's quotation from time to time by giving the Customer not less than four weeks' notice in writing.
- 13.7 Qolcom reserves the right to:
- a) increase the charges for the Software, Goods and Services on an annual basis with effect from each anniversary of the commencement of the Contract in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the commencement of the Contract and shall be the latest available figure for the percentage increase in the Retail Prices Index;
  - b) increase the price of the Services, Software and Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Services, Software and Goods to Qolcom that is due to:
    - I. any factor beyond the control of Qolcom (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - II. any request by the Customer to change the delivery date(s), quantities or types of Goods or Software ordered, or the Scope of Works; or
    - III. any delay caused by any instructions of the Customer in respect of the Services, Goods or Software; or
    - IV. failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Services, Goods or Software.
- 13.8 If the Customer fails to make any payment in full on the due date under this Contract Qolcom may:
- a) request payment on demand of all invoices issued whether or not due at that point;
  - b) request payment upfront for any further Services it provides;
  - c) charge interest on the outstanding amount, such interest to accrue on a daily basis at the rate of 4% above the base rate of Barclays Bank PLC from time to time in force or such higher rate as is prescribed under together with statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the date of payment, whether before or after judgment;
  - d) suspend the provision of the Services; and
  - e) exercise a lien over the Goods until such time as all outstanding payments are made in full.
  - f) The Customer shall not be entitled to withhold payment of any amount due to Qolcom by reason of any disputed claim by the Customer in connection with the

Contract nor shall the Customer be entitled to set off against any amount payable under the Contract to Qolcom any amount which is not then due and payable by Qolcom or for which Qolcom disputes liability.

- 13.9 In the event a Customer has any queries with or wishes to dispute an invoice then it must inform Qolcom in writing within 30 days of the date of invoice. Qolcom shall have no obligation to deal with any invoicing queries or disputes received by the Customer after this time.
- 13.10 All payments payable to Qolcom under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 13.11 All amounts due under this agreement shall be paid by the Customer to Qolcom in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Qolcom may, without prejudice to any other rights it may have, set off any liability of the Customer to Qolcom against any liability of Qolcom to the Customer.

#### 14. DATA PROTECTION

- 14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Qolcom is the Data Processor.
- 14.3 Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Qolcom for the duration and purposes of this Contract.
- 14.4 Without prejudice to the generality of clause 14.1, Qolcom shall, in relation to any Personal Data processed in connection with the performance by Qolcom of its obligations under this Contract:
- a) process that Personal Data only on the written instructions of the Customer unless Qolcom is required by the laws of any member of the European Union or by the laws of the European Union applicable to Qolcom to process Personal Data ("Applicable Laws"). Where Qolcom is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Qolcom shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Qolcom from so notifying the Customer;
  - b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - i. the Customer or Qolcom has provided appropriate safeguards in relation to the transfer;

- II. the data subject has enforceable rights and effective legal remedies;
  - III. Qolcom complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - IV. Qolcom complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data; and
  - h) maintain complete and accurate records and information to demonstrate its compliance with this clause 14.
- 14.5 The Customer consents to Qolcom appointing third-party processors (or as otherwise notified from time to time) of Personal Data under this Contract. Qolcom confirms that it has entered or (as the case may be) will enter with the third-party processor into a written Contract substantially on that third party's standard terms of business. As between the Customer and Qolcom, Qolcom shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 14.5.
- 14.6 Either party may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

## 15. LIABILITY

- 15.1 This clause 15 sets out the entire financial liability of Qolcom (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- a) any breach of this Contract;
  - b) any use made by the Customer of the Goods, Software and Services;
  - c) any non-performance or non-availability of the Goods, Software and Services; and
  - d) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 15.2 Except as expressly and specifically provided in the Contract all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15.3 Nothing in the Contract excludes or limits the liability of Qolcom for:
- a) death or personal injury caused by Qolcom's negligence.
  - b) fraud or fraudulent misrepresentation.
  - c) breach of any obligation as to title implied by statute; or
  - d) any other liability which cannot lawfully be excluded or limited.

15.4 Subject to clause 15.1 and 15.3 Qolcom's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract (including any indemnities under the Contract) shall be limited to an amount equal to 100% of the Charges.

15.5 Save as provided in Condition 15.1. Qolcom shall not be liable to the Customer for:

- a) any indirect or consequential loss or damage;
- b) loss of profit;
- c) loss of business;
- d) loss of agreements or contracts
- e) depletion of goodwill;
- f) wasted expenditure;
- g) loss of anticipated savings;
- h) loss of use or corruption of software, data or information;
- i) any other costs, expenses or other claims for indirect or consequential compensation whatsoever (however caused) which arise out of or in connection with the Contract.

## 16. TERMINATION

16.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

16.2 Without affecting any other right or remedy available to it, Qolcom may terminate the Contract with immediate effect by giving written notice to the Customer if:

- a) the Customer fails to pay any amount due under the Contract on the due date for payment;  
or
- b) there is a change of control of the Customer.

16.3 Without affecting any other right or remedy available to it, Qolcom may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Qolcom if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause b) to d) or Qolcom reasonably believes that the Customer is about to become subject to any of them.

#### 16.4 On termination of the Contract:

- a) the Customer shall immediately pay to Qolcom all of Qolcom's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Qolcom shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall return all and any Goods which have not been fully paid for. If the Customer fails to do so, then Qolcom may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

### 17. CONFIDENTIAL INFORMATION

#### 17.1 Each party shall keep the other party's Confidential Information confidential and shall not:

- a) use such Confidential Information except for the Permitted Purpose; or
- b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

#### 17.2 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 Contract.

#### 17.3 The Customer acknowledges that Qolcom's Confidential Information includes any network documentation, proposals, designs, plans, software or other materials created by Qolcom in connection with the Service and the Customer agrees not to make use of any such material for any purpose other than receipt of the Service from Qolcom.

#### 17.4 Qolcom acknowledges that the Customer Data is the Confidential Information of the Customer.

#### 17.5 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- a) it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and
- b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

#### 17.6 A party may disclose Confidential Information to the extent required 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.

#### 17.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party, or to be implied from this Contract.

#### 17.8 The provisions of this clause 11 shall continue to apply after termination of this Contract.

### 18. EMPLOYEES

#### 18.1 The parties do not intend for any employees, officers, agents and contractors to transfer pursuant to TUPE from the employment of the Customer into the employment of Qolcom in connection with the commencement and/or the provision of the Services.

18.2 If, notwithstanding condition 18.1, any employees, officers, agents and contractors transfer (or are alleged to transfer) from the employment of the Customer into the employment of Qolcom, the Customer, on the demand of Qolcom, shall indemnify and fully reimburse Qolcom, for all time, from and against all direct or indirect actions, proceedings, claims, demands, costs, losses, expenses (including legal expenses), damages, liabilities and penalties whatsoever incurred, suffered or paid by Qolcom in respect of the employment or termination of the employment or other liability relating to each transferring individual.

## 19. NON-SOLICITATION

19.1 Except in respect of any transfer of staff pursuant to TUPE, neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time during the Term or for a further period of 12 months after the termination of this Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

19.2 If either Qolcom or the Customer commits any breach of clause 19.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

## 20. ANTI-BRIBERY

20.1 Each party shall:

- a) comply with all applicable laws, regulations, mandatory codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- b) have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- c) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Contract;
- d) immediately notify the other party if a foreign public official becomes one of its officers or employees or acquires a direct or indirect interest in the first party (and the first party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract).

20.2 Breach of this clause 20 shall be deemed a material breach under clause 16.1 a).

20.3 For the purposes of this clause 20 a person associated with a party includes but is not limited to any subcontractor of that party.

## 21. FORCE MAJEURE

21.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;

- e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- i) interruption or failure of utility service.

21.2 Provided it has complied with condition 21.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

21.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

21.4 The Affected Party shall:

- a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## 22. WAIVER

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

## 23. SEVERANCE

23.1 If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.

23.2 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## 24. ENTIRE AGREEMENT

24.1 This Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements, contracts between them relating to its subject matter.



- 24.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 24.3 Each party agrees that its only liability in respect of those representations and warranties that are set out in this Contract (whether made innocently or negligently) shall be for breach of contract.
- 24.4 Nothing in this clause shall limit or exclude any liability for fraud.

## 25. ASSIGNMENT

- 25.1 The Customer shall not, without the prior written consent of Qolcom, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 25.2 Qolcom may at any time assign, transfer, charge, subcontract or deal in any other manner, with all or any of its rights or obligations under this Contract without the consent of the Customer.

## 26. NO PARTNERSHIP OR AGENCY

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## 27. THIRD-PARTY RIGHTS

This Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.

## 28. NOTICES

- 28.1 Any notice required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business or sent by email to the address specified in the Scope of Works.
- 28.2 Any notice shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, , or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service. If sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this condition, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include email.

## 29. DISPUTE RESOLUTION PROCEDURE

- 29.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure as follows:
- a) the operational managers of each party shall attempt to resolve the dispute as soon as practicably possible;

- b) if the operational managers are not able to resolve the dispute within 5 Business Days, either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the senior executives of both parties attempt in good faith to resolve it; and
- c) if the senior executives of each party are for any reason unable to resolve the Dispute within 15 Business Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (Mediation notice) to the other party to the Dispute, requesting a mediation. A copy of the Mediation notice should be sent to CEDR Solve. The mediation will start not later than 20 Business Days after the date of the Mediation notice.

29.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute.

### **30. GOVERNING LAW AND JURISDICTION**

30.1 This Contract 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.

30.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 1

### ACCEPTABLE USE POLICY

#### 1. Acceptable Use Policy

This acceptable use policy sets out the content standards that apply when the Customer makes use of the Services or Software.

#### 2. Account Details

- 2.1. If the Customer is provided with, a user identification code, password or any other piece of information as part of our Services, Software or security procedures, the Customer must treat such information as confidential and must not disclose it to any third party.
- 2.2. Qolcom has the right to disable any user identification code or password, whether chosen by the Customer or allocated by us, at any time, if in our reasonable opinion the Customer have failed to comply with any of the provisions of this policy.
- 2.3. If the Customer knows or suspects that anyone other than the Customer knows the Customer user identification code or password, the Customer must promptly notify Qolcom.

#### 3. Prohibited uses

3.1. The Customer may not use the Services and/or Software:

- a) In any way that breaches any applicable local, national or international law or regulation.
- b) In any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- c) For the purpose of harming or attempting to harm minors in any way.
- d) To bully, insult, intimidate or humiliate any person.
- e) To send, knowingly receive, upload, download, use or re-use any material which does not comply with Qolcom's content standards below.
- f) To transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam).
- g) To knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.
- h) In any way that involves child sexual exploitation or abuse.
- i) To upload terrorist content.

3.2. The Customer also agrees:

- a) Not to reproduce, duplicate, copy or re-sell any part of Qolcom's Services or Software
- b) Not to access without authority, interfere with, damage or disrupt:
  - i. any part of Qolcom's Services or Software;
  - ii. any equipment or network on which Qolcom's Services or Software stored;
  - iii. any software used in the provision of Qolcom's Services or Software; or
  - iv. any equipment or network or software owned or used by any third party.

#### 4. Content standards

- 4.1. These content standards apply to any and all material which the Customer contributes to Qolcom's Services or Software (Contribution).
- 4.2. The Content Standards must be complied with in spirit as well as to the letter. The standards apply to each part of any Contribution as well as to its whole.
- 4.3. Qolcom will determine, in its discretion, whether a Contribution breaches the Content Standards.
- 4.4. A Contribution:

- a) Must be accurate (where it states facts).
- b) Only contain opinions that are genuinely held.
- c) Must comply with the law applicable in any country from which it is posted and to which the website is targeted.

4.5. A Contribution must not:

- a) Be defamatory of any person.
- b) Be obscene, offensive, hateful or inflammatory.
- c) Bully, insult, intimidate or humiliate.
- d) Encourage, promote or provide instructions for deliberate self-harm.
- e) Encourage, promote or provide instructions for suicide.
- f) Encourage, promote or provide instructions for an eating disorder or behaviours associated with an eating disorder.
- g) Promote sexually explicit material.
- h) Include child sexual abuse material.
- i) Incite violence or hatred against particular groups.
- j) Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- k) Include content that would be considered a criminal offence under laws relating to terrorism, child sexual abuse material, racism or xenophobia.
- l) Infringe any copyright, database right or trade mark of any other person.
- m) Include video content that has been or would be likely to be given an R18 certificate by the British Board of Film Classification (BBFC).
- n) Include video content not suitable for BBFC classification.
- o) Include material that might impair the physical, mental or moral development of persons under the age of 18.
- p) Be likely to deceive any person.
- q) Breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- r) Contain illegal content or promote any illegal content or activity.
- s) Be in contempt of court.
- t) Be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
- u) Be likely to harass, upset, embarrass, alarm or annoy any other person.
- v) Impersonate any person or misrepresent the Customer identity or affiliation with any person.
- w) Give the impression that the Contribution emanates from Qolcom if this is not the case.
- x) Advocate, promote, incite any party to commit, or assist any unlawful or criminal act such as (by way of example only) copyright infringement or computer misuse.
- y) Contain a statement which the Customer know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism.
- z) Contain any advertising or promote any services or web links to other sites.

## 5. Breach of this policy

- 5.1. When Qolcom consider that a breach of this acceptable use policy has occurred, Qolcom may take such action as Qolcom deem appropriate.
- 5.2. Failure to comply with this acceptable use policy constitutes a material breach of Qolcom's General Terms and Conditions upon which the Customer are permitted to use Qolcom's Services or Software, and may result in Qolcom's taking all or any of the following actions:

- a) Immediate, temporary or permanent withdrawal of the Customer right to use Qolcom's Services or Software.
  - b) Immediate, temporary or permanent removal of any Contribution uploaded by the Customer to Qolcom's Services or Software.
  - c) Issue of a warning to the Customer.
  - d) Legal proceedings against the Customer for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach.
  - e) Further legal action against the Customer.
  - f) Disclosure of such information to law enforcement authorities as Qolcom reasonably feel is necessary or as required by law.
- 5.3. Qolcom excludes liability for all action Qolcom may take in response to breaches of this Acceptable Use Policy. The actions Qolcom may take are not limited to those described above, and Qolcom may take any other action Qolcom reasonably deem appropriate.