



**QGate Software Limited**  
D2 Fareham Heights  
Standard Way  
Fareham, Hampshire  
PO16 8XT, United Kingdom

T: +44 (0)1329 222 800  
E: [info@QGate.co.uk](mailto:info@QGate.co.uk)  
W: [www.QGate.co.uk](http://www.QGate.co.uk)

## **QGate Reseller Agreement**

**Agreement Number PRO00001**

**QGate Software Limited**

Document Version 6.2

## Agreement Terms

This agreement is made on the 16 March 2018 between:

QGate Software Limited whose registered office is at:  
D2 Fareham Heights, Standard Way, Fareham, Hampshire, PO16 8XT (**QGate**)

**And**

QGate Software Limited, whose registered office is at:  
D2 Fareham Heights, Standard Way, Fareham, Hampshire, PO16 8XT (**Reseller**)

### RECITALS:

QGate has agreed to appoint the Reseller as its non-exclusive Reseller to resell the Software in the Territory on the terms and conditions hereinafter contained.

**NOW IT IS HEREBY AGREED** as follows:

1. Definitions
  - 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:
    - “**Base Rate**” means the base rate (or such other rate as in the reasonable opinion of QGate replaces it) of National Westminster Bank plc (or such other London Clearing Bank as QGate may nominate) from time to time in force;
    - “**Intellectual Property Rights**” means patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, trade and business names and any other similar protected rights in any country;
    - “**Software**” means the software written by QGate including any components or other applications made available to the Reseller from time to time pursuant to this Agreement and all modifications, enhancements and replacements thereof and additions thereto provided by QGate. It includes any associated materials such as manuals, user guides and if provided source code;
    - “**License**” means a grant of rights to use Software as provided by QGate and purchased on a perpetual, non-exclusive basis by licensees and provided, subject to terms hereunder, to Reseller
    - “**Subscription**” means a grant of rights to access and use Software as provided by QGate to subscribers as a service through or from cloud computing environments operated by QGate and, subject to terms hereunder, to Reseller.
    - “**Territory**” means Worldwide
    - “**End User Price List**” means a set of prices to charge users for the Software provided by QGate to Reseller
  - 1.2 In this Agreement:
    - (a) Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
    - (b) Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated; and (in each case) vice versa;
    - (c) Any reference to a party to this Agreement includes a reference to his or its successors in title and permitted assigns;
    - (d) The headings to the Clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
2. Appointment

QGate hereby appoints the Reseller and the Reseller hereby agrees to act as the non-exclusive Reseller of QGate to represent the Software in the Territory. The Reseller shall not be entitled to assign or sub-contract any of its rights or obligations under this Agreement or appoint any agent to perform such obligations without the prior written consent of QGate. Notwithstanding the foregoing, the Reseller may assign its rights and obligations under this Agreement without approval of QGate to an entity that

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- acquires all or substantially all of the assets of the Reseller or to and subsidiary or affiliate or successor in a merger, acquisition or change of control of the Reseller
- 2.1 The Reseller represents and warrants to QGate that it has the ability and experience to carry out the obligations assumed by it under this Agreement and that by virtue of entering into this Agreement it is not and will not be in breach of any express or implied obligation to any third party binding upon it.
- 2.2 This Agreement shall commence on the date hereof for an initial period of one year and shall continue thereafter unless or until terminated by either party giving to the other not less than 3 months' written notice expiring on or at any time after the last day of the said initial period, but shall be subject to earlier termination as hereinafter provided.
3. Rights
- 3.1 QGate hereby grants to the Reseller the right to provide copies of the Software to the Reseller's customers under terms of an End User License Agreement (EULA) or an End User Subscription Agreement (EUSA)
- 3.2 The Reseller will make the Software available to the Reseller's customers in the form available from QGate only.
4. Reseller's obligations
- 4.1 The Reseller shall be entitled to demonstrate the Software to any bona fide prospective licensee or subscriber.
- 4.2 The Reseller shall:
- (a) At all times conduct its business in a manner that will reflect favorably on the Software and on the good name and reputation of QGate;
  - (b) Use QGate's trademarks and trade names relating to the Software only in the registered style or such other style used by QGate and shall not use such trademarks or trade names in connection with any other software or services or as part of the corporate or any trade name of the Reseller;
  - (c) Use its best endeavors to promote and extend the licensing of the Software throughout the Territory;
  - (d) At all times display, demonstrate and otherwise represent the Software fairly in comparison with competitive products from other suppliers;
  - (e) At all times employ a sufficient number of full-time staff who are capable of competently demonstrating the Software to prospective licensees;
  - (f) At all times maintain adequate demonstration facilities for the Software;
  - (g) Supply to QGate such reports, returns and other information relating to orders and projected orders for the Software and regarding licensees as QGate may from time to time reasonably require;
  - (h) Not make any promises or representations or give any warranties, guarantees or indemnities in respect of the Software except such as are contained in the QGate End User License Agreement ,or End User Subscription Agreement or as expressly authorised by QGate in writing;
  - (i) Not alter, obscure, remove, interfere with or add to any of the trademarks, trade names, markings or notices affixed to or contained in the Software delivered to or accessed by the

Reseller or its customers;

- (j) Not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of the Software or QGate or other practices which may be detrimental to the Software, QGate or the public interest;
- 4.3 Not more than once in each period of twelve months, QGate or its authorised agents may at any time request any reasonable information for the purpose of ascertaining that the Reseller is complying with its obligations under this Agreement. The Reseller shall provide this information within 7 working days of the request being made
- 4.4 Any review, request for information or audit conducted by QGate in accordance with clause 4.2(g) or 4.3 must
- (a) not cause business interruption to the Reseller;
  - (b) be conducted expeditiously, efficiently and during reasonable business hours;
  - (c) where conducted by an authorized agent of QGate, not be conducted by a competitor of the Reseller;
  - (d) not include access to certain categories of information reasonably specified by the Reseller including, without limitation, proprietary data, information subject to legal professional privilege, information from the Reseller's internal audits, information about the Reseller's costs or margins or information that is commercially confidential or sensitive.
5. Payments
- 5.1 In relation to sales of Licensed Software, and subject to 5.3 below, Reseller agrees to pay to QGate for each perpetual License of the Software provided by QGate to the Reseller's customers the amount as shown on QGate's published End User Price List, including associated support and maintenance fees, minus the margin as defined in Schedule A. QGate shall give the Reseller at least 60 days' advance notice of any change to such price list.
- 5.2 In relation to sales of Subscription Software, QGate shall invoice and collect payment from subscribers directly and provide to Reseller, quarterly in arrears, details of Reseller's customers paying for the Software such that Reseller may, within thirty (30) days of receipt of that statement, submit an invoice to QGate for amounts due according to the commission rates set out in Schedule A
- 5.3 In relation to Reseller's customers purchasing both Licenses and Subscriptions for Software, QGate reserve the right, at their own discretion, to either:
- (a) invoice and collect payment for Licenses and Subscriptions from customers directly and notify Reseller to allow for payment of commission according to Schedule A, or;
  - (b) permit Reseller to invoice and collect payment for Licenses and pay QGate for each perpetual License less the margin according to Schedule A
- 5.4 All amounts due to either party hereunder shall be payable in cleared funds not later than the 30 days after the date of invoice. All payments shall be made in Pounds Sterling
- 5.5 If the Reseller fails to make any payment to QGate under this Agreement on the due date then, without prejudice to any other right or remedy available to QGate, QGate shall be entitled to:
- (a) Suspend the performance or further performance of its obligations under this Agreement or any other agreement between the Reseller and QGate without liability to the Reseller;

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- (b) Charge the Reseller interest (both before and after any judgment) on the amount outstanding on a daily basis at the an annual rate of 4% above the Base Rate, such interest to be calculated from the date or last date for payment thereof to the date of actual payment (both dates inclusive) compounded quarterly. Such interest shall be payable on demand by QGate.
  - (c) Demand payment in advance for further orders before product licensing is provided by QGate.
- 5.6 All amounts payable under this Agreement are exclusive of any Value Added Tax and/or other applicable sales taxes, which the invoicing party may be additionally liable to collect and pay dependent on the local tax rules.
- 5.7 Not more than once in each period of twelve months during the term of this Agreement and for 5 years following the termination of this agreement the Reseller will allow QGate, at no cost to the Reseller and upon QGate giving at least 14 days notice, to instruct an independent auditor, who shall be a member of the Institute of Chartered Accountants for England & Wales, or such equivalent organisation appropriate to the country in which the Reseller operates, to obtain from the Reseller, any reasonable information for the purposes of ensuring that the Reseller is in compliance with clause 5.1 of this Agreement. Any such audit shall be carried out at QGate's expense unless it reveals a deficiency of 5 per cent or more of the amounts payable to QGate in any three month period in which event the Reseller shall pay the costs thereof. Payment of such costs and any deficiency shall be made by the Reseller within 7 days after the Reseller shall have received written notice thereof from QGate together with a fee note showing the amount(s) due. Any such deficiency shall carry interest in accordance with clause 5.5(b) from the date it was originally due. The provisions of this Clause shall survive the termination of this Agreement. These records should be accurate in keeping with normal accounting practices and should include the following:
  - (a) end user name and address
  - (b) product and version shipped, with license numbers if applicable
  - (c) number of licenses/users
  - (d) date of shipment
  - (e) end user order details
- 5.8 The provisions of this Clause shall survive the termination of this Agreement
- 6. Warranty
  - 6.1 The Reseller expressly agrees and acknowledges that no condition, warranty or representation of any kind is or has been given by or on behalf of QGate in respect of the Software with respect thereto and accordingly the Reseller confirms that it has not, in entering into this Agreement, relied on any condition, warranty or representation by QGate or any person on QGate's behalf, express or implied, whether arising by law or otherwise in relation to the Software, including, without limitation, conditions, warranties or representations as to the description, quality or fitness for any purpose, of the Software and the benefit of any such condition, warranty or representation by QGate is hereby irrevocably and unconditionally waived by the Reseller. To the extent permissible under applicable law, the Reseller hereby also waives any rights which it may have in tort in respect of any of the matters referred to above and irrevocably agrees that QGate shall have no greater liability in tort in respect of any such matter than it would have in contract after taking account of all of the foregoing exclusions. No third party making any representation or warranty relating to the Software is the agent of QGate nor has any such third party authority to bind QGate thereby.
  - 6.2 The warranties set out in any End User agreement (License or Subscription) relating to the Software be subject to the limitations set out therein and QGate shall have no liability or obligations under the said warranties other than to remedy breaches thereof by the provision of Software within a reasonable time and without charge to the Reseller. If QGate shall fail to comply with such obligations its liability for such failure shall be limited to a sum equal to the amount paid by the Reseller's

- customer to QGate for the Software. The foregoing states the entire liability of QGate, whether in contract or tort, for defects and errors in the Software.
- 6.3 The Reseller hereby warrants to QGate that the Reseller has not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing, except as specifically set out in this Agreement and the Reseller shall have no right to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind or terminate this Agreement other than as provided in Clauses 2.3 and 10.1 of the Agreement.
7. Proprietary rights
- 7.1 The Software and the Intellectual Property Rights therein are and shall remain the property of QGate and its licensors and QGate reserves the right to grant licences to use them to third parties.
- 7.2 QGate shall indemnify the Reseller against any damages awarded against, and costs payable by, the Reseller in connection with a successful claim or settlement that the normal access, use or possession of the Software infringes the intellectual property rights of any third party provided that QGate is given immediate and complete control of such claim, that the Reseller does not prejudice QGate's defence of such claim, that the Reseller gives QGate all reasonable assistance with such claim and that the claim does not arise as a result of the use of the Software in combination with any equipment or programs not supplied or approved by QGate or any modifications made to the Software by the Reseller or End User. QGate shall have the right to replace or change all or any part of the Software in order to avoid any infringement. The foregoing states the entire liability of QGate to the Reseller in respect of the infringement of the Intellectual Property Rights of any third party.
8. Reseller's Internal Use Rights
- 8.1 To enable the Reseller to become familiar with and also to be able to demonstrate the products, QGate agrees to allow the use of certain QGate products within either:
- (a) The Reseller's own production installation
  - (b) demonstration installations
- 8.2 Under these terms the Reseller will be allowed full internal use rights to the Software according to Schedule A, Section 2 hereunder
- 8.3 For the avoidance of doubt, these internal use rights do not permit any direct commercial offering or service, such as in the use of rechargeable services. An example of prohibited use would be the use of Paribus Discovery to carry out chargeable data services to the Reseller's customers.
- 8.4 For any product use under these terms no charge will be incurred in the first year of this Agreement. For subsequent years internal use will be continued at no cost to the Reseller providing the Reseller has generated a minimum of £5,000 revenue to QGate of total sales of Software Licenses or Subscriptions within the preceding 12 months period.
- 8.5 Should the minimum revenue amount not be reached QGate reserves the right to revoke the internal use rights. Notice will be given in writing of this action to the Reseller at the address contained within this Agreement.
- 8.6 At the point of revocation the Reseller may purchase Licenses or Subscriptions should they wish to continue use of Software and the Reseller's commission and/or margin will be applied to any such purchases.
9. Alterations
- 9.1 Except only to the extent and in the circumstances expressly required to be permitted by QGate by

- law or as permitted by this Agreement, the Reseller shall not copy, alter, modify, adapt or translate the whole or any part of the Software in any way whatever or permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs, or decompile, disassemble or reverse engineer the same nor attempt to do any of such things.
- 9.2 To the extent that the law grants the Reseller the right to decompile the Software in order to obtain information necessary to render the Software interoperable with other computer programs used by the Reseller, QGate hereby undertakes to make that information readily available to the Reseller. QGate shall have the right to impose reasonable conditions such as a reasonable fee for doing so. In order to ensure that the Reseller receives the appropriate information, the Reseller must first give QGate sufficient details of the Reseller's objectives and all other software concerned. Requests for the appropriate information should be given by notice to QGate in accordance with this Agreement.
10. Termination
- 10.1 Either Party may terminate this Agreement forthwith on giving notice in writing to the other Party if:
- (a) the other Party commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a notice in writing from the Party serving the notice, to remedy the breach, or
  - (b) the other Party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other Party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on its business, or
  - (c) fails to place orders to the minimum value as required under Clause 8.4 for any 2 consecutive years during the term of this Agreement.
- 10.2 Forthwith upon the termination or expiry of this Agreement the Reseller shall return to QGate the Software and all copies of the whole or any part thereof in its possession or control or, if requested by QGate, shall destroy the same (in the case of the Software by erasing them from the magnetic media on which they are stored) and certify in writing to QGate that they have been so destroyed or erased.
- 10.3 Any termination of the rights granted under this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
11. Miscellaneous
- 11.1 For the avoidance of doubt, this Agreement expressly excludes any provision of professional services supplied by QGate to Reseller or to Reseller's customers for the implementation or customisation of either Software or Service products and, if such services are required, these should be supplied under the terms of a separate services agreement
- 11.2 Notwithstanding anything else contained in this Agreement, neither party shall be liable for any failure or delay in performing its obligations due to circumstances beyond such party's control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror or, strikes (excluding those involving such party's employees)."
- 11.3 Notwithstanding anything else contained in this Agreement, neither party shall be liable to the other party for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.
- 11.4 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement

- shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.
- 11.5 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.
- 11.6 Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.
- 11.7 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.
- 11.8 This Agreement shall be governed by and construed in accordance with the laws of England.
- 11.9 Any dispute, which may arise between the parties concerning this Agreement, shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.
- 11.10 Neither party will solicit or induce any person within the other party's organisation for employment or contracting.



In witness whereof the parties have executed this Agreement comprising the conditions and the Schedules attached hereto.

Signed for and on behalf of :	<b>QGate Software Limited</b>
Signature	
Print name	
Job Title	
Date	

Signed for and on behalf of :	<b>QGate Software Limited</b>
Signature	
Print name	
Job Title	
Date	

## Schedule A – Reseller Commission , Margin and Internal Rights

### 1. DETAILS OF THE COMMISSION AND MARGIN

Software Licence Type	Notes	Commission/ Margin
Subscription	<p>Commission is paid on Subscriptions to Software by Reseller’s customers on a quarterly basis in arrears until, either (whichever applies soonest):</p> <ol style="list-style-type: none"> <li>1. Reseller’s customer cancels their subscription or transfers their subscription to an alternate reseller</li> <li>2. Three (3) complete years after each customer’s initial subscription date</li> <li>3. This agreement is terminated</li> </ol>	15%
License	<p>Margin will apply to license sale and the first year's maintenance fees.</p> <p>At QGate's ongoing discretion, and on a customer-specific basis, subsequent year's maintenance fees may also be billed by Partner to their customers and, in those cases, the same margin shall apply to the fees charged. In cases where QGate assumes responsibility for the delivery of all support and maintenance and bills customers directly for those services, no margin will be due to the Partner</p>	25%

### 2. DETAILS OF INTERNAL USE RIGHTS

Product	Permitted Numbers of Instances/users	Quantity
Licenses	Internal production use of Paribus Discovery (PBd)	1 user N/A
	Demonstration use of Paribus Discovery (PBd) *	50 users N/A
	Internal production use of Intelli CTi	50 Users
	Demonstration use of Intelli CTi *	N/A
	Internal Production use of PowerEntry Demonstration use of PowerEntry	
Subscriptions	One Internal production instance of Paribus Interactive (PBi)	50 users
	One Demonstration instance of Paribus Interactive (PBi)	20 users

\* Note, Paribus Discovery and intelli-CTi have evaluation modes allowing licence free demonstrations