QGate Standard Terms and Conditions

Document Version: 2.3

Terms and Conditions

1. Definitions

In these Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"**Agreement**" means the agreement for the provision by QGate of any of Software, Product, Services;

"**Conditions**" means the terms and conditions set out herein and includes any special terms and conditions set out in main body of the document;

"**Intellectual Property Rights**" includes patents, trade marks, 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;

"**Price**" means the amount to be paid for the Software, Product or Service, as set out in or calculated in accordance with the relevant quotation or proposal;

"**Materials**" means any and all works of authorship, products and materials developed, written or prepared by QGate in relation to the Service (whether alone or jointly and on whatever media) including, without limitation, the QGate Software, any and all computer programs, data, diagrams, charts, reports, specifications, studies and inventions and all drafts thereof and working papers relating thereto;

"**QGate**" means QGate Software Limited;

"**QGate Licence**" means QGate's standard licence to end users from time to time in force to use the QGate Software (copies of such licence are available on request)

"**QGate Software**" means any computer programs written by QGate and which QGate provides for use by the Client 's Customer in connection with the Services;

"**Service**" means the any work including but not limited to programming, consulting, support, etc provided by QGate pursuant to the Agreement as set out in the main body of this document.

"**Software**" means the any software provided by QGate, be it a produced by QGate or other author.

"**Product**" means the any other hardware or software component or provided by QGate, not covered within the definition of Service of Software.

2. Engagement

2.1 The Client hereby agrees to engage QGate and QGate hereby agrees to provide the Software, Product and/or Service as an independent contractor on the terms and conditions set out in the Agreement.

3. QGate's undertakings

3.1 QGate undertakes to the Client that it will provide the Software, Product and/or Services on the terms set out in the Agreement.

3.2 QGate hereby agrees to grant the Client a perpetual, non-exclusive and non-revocable license to use the Materials within the system, product or process within its own business purposes. For the avoidance of doubt this does not include re-sale or re-distribution outside the Clients own business.

4. Client's obligations

4.1 The Client shall:

(a) provide to QGate full free and safe access to such locations as are reasonably requested by QGate to enable it to perform the Services;

(b) provide to QGate free of charge such office, computer and other facilities as are reasonably requested by QGate to enable it to perform the Services;

(c) ensure that its employees and other independent contractors co-operate fully with QGate in relation to the provision of the Services; and

(d) promptly furnish QGate with such information and documents as it may reasonably request for the proper performance of its obligations under the Agreement;

(e) appoint a representative who shall have full authority to take all necessary decisions regarding the provision of the services (including the variation or amendment of the Agreement);

(f) ensure that its representative shall attend such meetings as are requested by QGate to discuss and minute the progress of the Services.

4.2 The Client shall not during the provision of service or for a period of 12 months after completion of the service:

(a) solicit or endeavour to entice away from or discourage from being employed by QGate any person who is, or shall at any time during such one year period be, one of QGate's employees (an "Employee");

(b) employ or attempt to employ any Employee.

5. Intellectual Property Rights

5.1 Legal and beneficial title to all Intellectual Property Rights in the Materials or otherwise devised or created by QGate in connection with the Service shall remain vested in QGate or its licensors.

5.2 Subject to clause 6.1, QGate shall indemnify the Licensee against any damages awarded against, and costs payable by, the Licensee in connection with a successful claim or settlement that the normal use or possession of the Materials infringes the Intellectual Property Rights of any third party provided that QGate is given immediate and complete control of such claim, that the Licensee does not prejudice QGate's defense of such claim, that the Licensee gives QGate all reasonable assistance with such claim and that the claim does not arise as a result of the use of the Materials in combination with any equipment or programs not supplied or approved by QGate or any Licensee Modifications or the Source Materials relating thereto. QGate shall have the right to replace or change all or any part of the Materials in order to avoid any infringement. The foregoing states the entire liability of QGate to the Licensee in respect of the infringement of the Intellectual Property Rights of any third party.

5.3 Where the Service involves the amendment, variation, adaptation or enhancement of, or any other work in relation to, Third Party Software presented by the Client, the Client represents and warrants that all approvals, authorisations, licences and consents necessary for QGate to undertake such Services have been obtained and the Client agrees on demand to indemnify QGate against and to hold QGate harmless from (on an after tax basis) all demands, liabilities, damages, costs, expenses and actions that may be suffered, sustained or incurred by QGate resulting from or arising out of any claim that such representation and warranty is not correct.

6. Fees and expenses

6.1 In consideration of the Software, Product and/or Service the Client shall pay the Price to QGate.

6.2 All amounts quoted are exclusive of sales taxes, which shall be payable by the Client in addition to the relevant amount at the rate prescribed by applicable law.

6.3 During the Services, QGate may require critical information, documentation or detailed instructions from Client. Such requests shall be issued to Client in writing. In the event that Client fails to provide, in writing, such information, documentation or detailed instructions in response to such a request within 48 hours of the delivery of the request, QGate shall be entitled to charge additional fees on a time and materials basis.

6.4 If any amount payable by the Client under the Agreement is not paid by the due date QGate shall be entitled to suspend provision of the Services until such time as payment is made.

6.5 Unless otherwise agreed by QGate, payment terms will be 30 days from date of invoice. The structure of the invoicing will be agreed as part of the specific services agreement or quote as accepted by the client.

6.6 The Client shall pay or reimburse to QGate all expenses and disbursements incurred by QGate in connection with the performance of the Services.

6.7 If any sum payable under the Agreement is not paid within 7 days after the due date then (without prejudice to QGate's other rights and remedies) QGate reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 4 per cent above the base rate of Barclays Bank Plc (or such other London Clearing Bank as QGate may nominate) from time to time in force compounded quarterly. Such interest shall be paid on demand by QGate.

7. Confidential information

7.1 The Client agrees that it shall not without QGate's prior written consent use or divulge or communicate to any person any of the following ("Confidential Information"):

(a) any information concerning the products, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of QGate which may come to its attention;

(b) the Materials or the substance of any report, recommendation, advice or test made, given or undertaken by QGate in connection with its duties hereunder; and the Client shall use its best endeavours to prevent the unauthorised publication or disclosure of any Confidential Information.

7.2 The provisions of clause 7.1 shall survive the termination of the Agreement but the restrictions contained in clause 7.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure by the Client.

8. Warranty

8.1 QGate warrants that:

(a) without prejudice to clause 8.1(b), the Services will conform to the standards generally observed in the industry for similar services and will be provided with reasonable skill and care;

(b) subject to clause 8.2, the QGate Software will for a period of 30 days after "go live" date or date of acceptance whichever is sooner in the Services, provide the functions and facilities that it is designed to provide in all material respects.

8.2 If QGate receives written notice of any breach of the warranty referred to in clause 8.1(b) within the 30 day period referred to therein then QGate shall at its own expense and within a reasonable time after receiving such notice remedy the defect or error in question provided that the Client has complied with its obligations hereunder. QGate shall have no liability or obligations under the said warranty other than to remedy breaches thereof by the provision of materials and services within a reasonable time and without charge to the Client. If QGate shall fail to comply with such obligations its liability for such failure shall be limited to a sum equal to the Price to the extent that it relates to the item of QGate Software concerned. The foregoing states the entire liability of QGate, whether in contract or tort, for defects or errors in the QGate Software.

8.3 QGate shall have no liability under the warranty in clause 8.1(b) in respect of:

(a) defects or errors resulting from any modifications of the QGate Software or any software or equipment in conjunction with which it is used;

(b)   incorrect use of the QGate Software or operator error;

(c)   any fault in any software or equipment in conjunction with which the QGate Software is used;

(d)   defects or errors caused by the use of the QGate Software on or with equipment or programs not approved in writing by QGate.

8.4   QGate shall be entitled to make an additional charge in accordance with its standard scale of charges from time to time in force for correcting or investigating defects or errors in QGate Software:

(a)   which fall within the exclusions in clause 8.3; or

(b)   which QGate finds are not necessary.

8.5   The express terms of the Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

9.   Termination

9.1   Without prejudice to any other right or remedy either party shall be entitled to terminate the Agreement if:

(a)   Client fails to make any payment in full on the due date thereof; or

(b)   either party commits any material breach of any term of the Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing so to do, to remedy the breach; or

(c)   either party provides 30 days notice in writing of their intent to terminate this agreement

(d)   either party ceases or threatens to cease to carry on business; or

(e)   either party has 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 Defaulting Party shall enter into or propose to enter into any voluntary arrangement with its creditors or shall become subject to an administration order.

9.2   Forthwith upon the termination of the Agreement:

(a)   the Client shall return to QGate all Confidential Information in its possession or control and all copies of the whole or any part thereof or, if requested by QGate, shall destroy the same and certify in writing to QGate that they have been destroyed;

(b)   all amounts payable to QGate shall become immediately due and payable.

9.3   Any termination of the 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.

10.   Miscellaneous

10.1   The Client shall not be entitled to assign or otherwise transfer the Agreement or the benefit thereof whether in whole or in part without the written consent of QGate. Such consent shall not be unreasonably withheld and shall not be necessary when the assignment is made as the result of a Party being acquired or the sale of substantially all of a Party's assets.

10.2   Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing any its obligations hereunder (other than any obligations relating to the payment of money) if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor, customer or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor, customer or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Agreement and by law):

(a)   any costs arising from such delay shall be borne by the party incurring the same;

(b)   either party may, if such delay continues for more than 5 weeks, terminate the Agreement forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination.

10.3   The Client hereby warrants that it has not been induced to enter into the Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Agreement and the Client hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in the Agreement or for breach of any warranty not contained herein and/or to rescind this Agreement.

10.4   QGate shall indemnify the Client and keep the Client fully and effectively indemnified on demand against any loss of or damage to any property of the Client or injury to or death of any of the Client's employees caused by any negligent act or omission or wilful misconduct of QGate, its employees, agents or sub-contractors.

10.5   The Client shall indemnify QGate and keep QGate fully and effectively indemnified on demand against any loss of or damage to any property of QGate or injury to or death of any of QGate's employees caused by any

negligent act or omission or wilful misconduct of the Client, or their respective employees, agents or sub-contractors.

10.6   Except in respect of injury to or death of any person (for which no limit applies) the respective aggregate to liability of QGate and the Client under this agreement shall not exceed [the price of the contact]

10.7   Notwithstanding anything else contained in the Agreement, QGate shall not be liable for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

10.8   No forbearance, delay or indulgence by either party in enforcing the provisions of the 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

10.9   The 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 the Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

10.10   In the 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 the Agreement includes a reference to his 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 the Agreement.

10.11   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.

10.12   If there shall be any inconsistency between the provisions of the Conditions and any other part of the Agreement the provisions of the Conditions shall prevail.

10.13   This Agreement shall be governed by and construed in accordance with the laws of England.