

**SOFTWARE AS A SERVICE TERMS AND CONDITIONS (“SaaS Terms”)** of (i) **QA Limited** (company number 02413137) with registered offices at International House, 1 St Katharine’s Way, London, E1W 1UN (ii) **QA USA, Inc.** (formerly Cloud Academy Inc.) whose principal place of business is at 530 Fifth Avenue, Suite 703, New York, NY 10036 (“QA USA”), and (iii) all **Affiliates of QA Limited** from time to time. These SaaS Terms are effective from 1 August 2024 and incorporate the General Terms of Sale available at <https://www.qa.com/legal-privacy/> (“General Terms”).

## 1. DEFINED TERMS

1.1. Definitions in the General Terms shall apply to these SaaS Terms and capitalized terms used but not otherwise defined shall have the following meanings:

**Access Credentials:** means the necessary access credentials, passwords, or connections to allow the Customer and its Users to access the Platform;

**App:** means the mobile and tablet application software, the data supplied with the software and the associated media provided by the Supplier through which a User may access Product Content from time to time;

**Customer Content:** means any Customer specific content, including any Customer trademark, service mark, trade name, brand, logo or domain name owned or used by the Customer and User Data, for use in or to be uploaded to the Platform or App or provided or made available by the Customer to the Supplier, and which the Supplier had no part in creating, developing or designing, and which may be more particularly described as being required to be delivered in or pursuant to the applicable Order;

**Customer Systems:** means the computer systems operated by or for the Customer or its Affiliates or Users and any mobile devices owned or provided to Users (whether provided to Users by the Customer or its Affiliates or not);

**Consulting Services:** means consulting services provided or to be provided by the Supplier under the Contract including anything described as these services in the Order, creation of Product Developments, or provision of User Data and associated reports;

**Contaminants:** means any computer software routine intended or designed to disable, damage, erase, disrupt or impair the normal operation of, or provide unauthorized access to, or modification or monitoring of, any computer system or any software or information stored on any computer system, including viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors or trap door devices;

**Minimum Specification:** means any minimum technical specification for accessing the Platform and Product Content, provided by the Supplier in the App, on the Website, Order or as notified to the Customer or User from time to time;

**Platform:** means the Supplier’s proprietary, cloud-based training platform made available through and which includes the Supplier’s Website, and Supplier’s related App, in each case through which the Product Content is accessed by Users;

**Product Content:** means all related training modules, virtual libraries, user guides, exams educational materials, and any other related documentation or material (including reports) supplied, created or developed by or on behalf of Supplier in conjunction with the Services and any information and materials (including works of authorship, files, processes, systems, ideas, know-how, concepts, methodologies, flowcharts, manuals, data, databases, digital content, database structures, content, descriptions, documents, notes, records, results, reports, text, research, lists, diagrams, artwork, designs, sketches, models, photographs, drawings, plans, specifications, images, logos, styles and graphics (in whatever form and on whatever media)) provided by the Supplier from time to time as part of the Services;

**Product Developments:** means any modules, configurations or customizations to the Platform or Product Content or their delivery or provision that are developed by the Supplier for the Customer or Users;

**Product Specification:** means any specification for the Platform and Product Content, provided by the Supplier on the Websites, in the App or in writing to the Customer from time to time;

**Service Level Schedule:** means the Supplier’s service levels for provision of access to the Platform, as set out in Appendix 1;

**Subscription Term:** means the period of time where Users may access the Platform and Product Content, as set forth in the Order;

**Third Party Products:** means any third-party products, materials, features, or functionality accessible to the Customer and its Users through the Platform;

**User:** means an employee, officer, director, contractor (acting in a similar role to an employee) or authorized representative of the Customer or the Customer’s Affiliate, who is authorized by the Customer to access and use the Platform under the rights granted to the Customer pursuant to these SaaS Terms and for whom access to the Platform has been purchased;

**User Data:** means any data about Users obtained by the Supplier, including related to the use of and access to the Platform and Product Content by Users;

**User Rules:** means the standard user rules which the Supplier requires Users to agree to from time to time including in relation to their access to and use of the

Platform and Product Content; and **Websites:** means qa.com and app.qa.com (as applicable) plus any other website used by the Supplier or its Affiliates for provision of the Services and/or which is operated by the Supplier and accessed by the Customer.

## 2. GRANT OF LICENSE

2.1. In consideration of the Customer’s payment of the Charges and the Customer’s compliance with the Contract and all Users’ compliance with the User Rules, the Supplier hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable license to the Customer and its Affiliates as set forth in an Order, to access and use the Platform and Product Content and to permit Users to access and use the Platform and Product Content, in each case only during the Subscription Term and in accordance with the terms of the Contract.

2.2. The Customer shall use the Platform and Product Content for the Customer’s and its Affiliates’ ordinary internal educational and training purposes and shall not make the Platform or Product Content available for use or access by any third party other than its Affiliates, except to the extent that the Supplier expressly permits in writing.

2.3. The Customer shall not copy, reproduce, alter, vary or modify the Platform or Product Content or use the Platform or Product Content or transfer the right to use the Platform or Product Content to any third party (other than its Affiliates), nor allow a User to do so. The Customer shall not directly or indirectly remove any proprietary notices from the Platform or Product Content in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any Applicable Laws.

2.4. Any rights in respect of the Platform or Product Content not expressly granted in these SaaS Terms by the Supplier are reserved by the Supplier and the Customer shall have no rights therein or claims thereto.

## 3. USERS

3.1. The Customer shall ensure that each User agrees to comply with, and does comply with, the User Rules. The Customer shall be liable for any failure by a User to comply with the User Rules and any obligation or agreement to be performed or observed by a User.

3.2. The Customer shall appoint a User to deal with administrative functions relating to the Customer’s and its Users’ use of and access to the Platform.

3.3. The Customer undertakes that the maximum number of Users that are authorized to use the Platform shall not exceed the number of Users specified in the Order (or as otherwise expressly agreed in writing by Supplier). For the avoidance of doubt, the number of Users, seats, or licenses set forth in the Order correspond to the number of named individuals who may access and use the Platform. None of the licenses granted in any Order allow concurrent usage by more than one individual person.

3.4. In the event the Customer exceeds the permitted number of Users, or in the event of an unauthorized transfer of Access Credentials, in each case as discovered by the Customer from time to time, the Customer shall promptly inform the Supplier with supporting documentation sufficient for Supplier to determine the amount of the overage. The Supplier may, in addition to any other rights or remedies available, invoice the Customer for the additional users and scope of use at the Supplier’s then-current list price, and the Customer shall pay such invoiced amounts within five (5) days of receipt.

3.5. If the Customer would like to make access to the Platform and Product Content available to any more Users than is specified within the parameters of the Order, then:

3.5.1. the Customer shall first contact the Supplier to discuss any additional Charges with a new Order for additional Users (and Subscription Term for those additional Users); and

3.5.2. the Customer shall agree to pay any additional Charges for those additional Users prior to such access.

3.6. The Supplier may provide data or information to help the Customer to monitor how many of its purchased licenses have been used, but it is the Customer’s responsibility to check that it has ordered sufficient licenses for its Users and obtain additional licenses for its Users as it needs for its purposes.

3.7. The Supplier may provide to the Customer the necessary Access Credentials to allow the Customer and its Users to access the Platform. Alternatively, the Supplier may make available to the Customer functionality for the Customer to configure, generate, and issue Access Credentials for its own Users. In each case, the Customer agrees and undertakes that:

3.7.1. it will not (except to the extent that the Order provides otherwise, or the Supplier expressly agrees in writing) allow any username or password assigned to a User to be used by more than that one individual User or to be transferred or made available to any other User;

- 3.7.2. the passwords for the Users are kept strictly confidential and shall not be disclosed to any third party, including other Customer personnel, without the Supplier's prior written consent;
- 3.7.3. it will use all reasonable efforts to prevent any access to or use of the Platform and Product Content by anyone other than the User;
- 3.7.4. it shall be liable for any use of or access to the Platform and Product Content using a User's username and password;
- 3.7.5. the User is at all times an employee, officer, director, contractor (acting in a similar role to an employee) or authorized representative of the Customer or of the Customer's Affiliate;
- 3.7.6. the User is someone for whom the Customer has already authorized as a User with the Supplier and has agreed to pay the Charges to the Supplier in accordance with the applicable Order for such User to have access to and use of the Platform and Product Content;
- 3.7.7. any person who is stated by or on behalf of the Customer to be a User capable of administrative privileges, is authorized to act in that role and represent the Customer and any Affiliate of the Customer in that capacity;
- 3.7.8. it has obtained permission from the owners of any mobile telephone or handheld devices (if not owned by the Customer or the Customer's Affiliate or User) that are being used to access the Product to download the App onto such devices; and
- 3.7.9. it accepts responsibility for the use of the App or the Product Content on or in relation to any mobile telephone or handheld devices, whether or not they are owned by the Customer or the Customer's Affiliate or User.
- 3.8. The Customer shall inform the Supplier in writing immediately if it becomes aware or suspects that the Platform, Product Content or a password or username is being used or accessed by anyone other than the relevant User or by anyone who is no longer a User, in which case the Supplier shall be entitled to cancel that password or username and/or disable access to and use of the Platform and Product Content without notice to the Customer or User in addition to any other rights and remedies it may have and the Supplier may charge the Customer for such overage in accordance with Condition 3.4 and be liable to the Supplier for all other costs and damages incurred by the Supplier in relation to such unauthorized use.
- 3.9. The Supplier reserves the right to edit, amend or issue new usernames and passwords or require the Customer or Users to change a username or password at any time.
- 3.10. The Customer shall not upload more than two (2) hours of custom video per month and if the Customer exceeds or seeks to exceed this limit, the Supplier reserves the right, at its sole option: (i) to refuse to upload video in excess of two hours; or (ii) to assess additional fees for content in excess of two hours per month. Without limiting the foregoing, the Supplier reserves the right to limit the Customer's or any User's use of the Platform if the bandwidth, usage, or volume uploaded by the Customer or such User significantly exceeds the bandwidth, usage, or volume typically uploaded by other similarly situated Customers.
- 4. BETA & TRIAL FEATURES**
  - 4.1. If the Order includes a free trial before the start of a paid subscription, and the Customer desires not to continue with the paid subscription at the end of the free trial, the Customer must notify the Supplier of its election not to continue before the expiration of the free trial. Otherwise, at the end of the free trial, the Customer will automatically be charged for the paid subscription in accordance with the then current list-price of the Supplier.
  - 4.2. The Supplier may make available certain new, emerging, temporary, or beta products or features (collectively, "**Beta Features**") through the Platform.
  - 4.3. ALL BETA FEATURES AND SERVICES MADE AVAILABLE ON A FREE TRIAL BASIS ARE PROVIDED "AS-IS AND AS-AVAILABLE, AND THE SUPPLIER HEREBY DISCLAIMS ALL LIABILITY ARISING FROM OR RELATED TO SUCH BETA FEATURES AND FREE TRIAL PRODUCTS. THE CUSTOMER ASSUMES ALL RISKS IN CONNECTION WITH ITS USE OF BETA FEATURES AND FREE TRIAL PRODUCTS. THE SUPPLIER MAY TERMINATE THE CUSTOMER'S ACCESS TO ANY BETA FEATURES, SERVICES MADE AVAILABLE ON A FREE TRIAL BASIS, OR BRIDGE SERVICES (DEFINED BELOW) AT ANY TIME WITHOUT NOTICE TO THE CUSTOMER AND WITHOUT LIABILITY.
- 5. THIRD-PARTY PRODUCTS & BRIDGE SERVICE**
  - 5.1. The Supplier may from time to time make Third-Party Products available to the Customer. The Platform may also include links to, functionality to support, or other options for Users to access Third-Party Products from within the Platform. Third-Party Products are subject to their own terms and conditions required by the applicable third party offering the Third-Party Product. If the Customer does not agree to abide by the applicable terms for any such Third-Party Products, then the Customer should not install or use such Third-Party Products. Third-Party Products include, but are not limited to, any hands-on labs and live, working environments provided by

- third parties by or through the Platform, including without limitation, environments within AWS, Microsoft Azure, and/or Alibaba, including any interfaces, connections or Bridge Services (as defined in Condition 5.2) provided by the Supplier in order for the Customer to access such hands-on labs or working environments. The Customer agrees to use any Third-Party Products solely for internal education and training purposes as part of the Platform.
- 5.2. If requested by the Customer, the Supplier may make available a complimentary technical enabling service designed to improve the Customer's ability to connect to and operate certain Third-Party Services (including hands-on laboratory environments) in connection with the Platform (the "**Bridge Service**"). The Bridge Service is optional and may be turned off by the Customer at any time. The Bridge Service may not be suitable for all customers, and the Customer shall conduct its own evaluation of and diligence regarding the Bridge Service to determine whether use of the Bridge Service is appropriate for the Customer.

## **6. WARRANTY AND DISCLAIMERS**

- 6.1. The Supplier shall:
  - 6.1.1. perform its obligations in accordance with Good Industry Practice;
  - 6.1.2. shall maintain all necessary rights, permissions, consents and licenses to perform its obligations and exercise its rights under the Contract;
  - 6.1.3. provide Services without breaching any agreement and without infringing any third party rights (including any Intellectual Property Rights in the Product and Product Content);
  - 6.1.4. provide access to the relevant part of the Product Content and Platform in accordance with the Product Specification to the Users during the Subscription Term in accordance with the Contract;
  - 6.1.5. use all reasonable efforts in accordance with Good Industry Practice not to introduce into the Product Content or Platform any Contaminants; and
  - 6.1.6. use an industry-recognized security software program (to which latest recent patches and updates have been applied) in accordance with Good Industry Practice to detect the presence of any Contaminant and that, upon detection of any Contaminant, it shall be promptly eradicated or quarantined by the Supplier.
- 6.2. Except as set out in Condition 6.1, the Supplier gives no warranty:
  - 6.2.1. as to the accuracy, completeness or suitability of the Platform or Product Content, or that the Platform or Product Content will meet any of the Customer's or its Affiliate's or User's present or future specific individual needs or requirements;
  - 6.2.2. that the Platform or Product Content will be compatible with the Customer Systems other than those meeting the Minimum Specification; or
  - 6.2.3. that access to the Platform and Product Content will be delivered without interruption, fault or error. It may be necessary to suspend or restrict access to the Platform and Product Content at any time for any reason including for any urgent or planned maintenance.
- 6.3. ALL THIRD-PARTY PRODUCTS, INCLUDING THE BRIDGE SERVICES, ARE PROVIDED AS-IS AND AS-AVAILABLE, AND THE SUPPLIER HEREBY DISCLAIMS ALL LIABILITY ARISING FROM OR RELATED TO SUCH THIRD-PARTY PRODUCTS. THE CUSTOMER ASSUMES ALL RISKS IN CONNECTION WITH ITS USE OF THIRD-PARTY PRODUCTS.
- 6.4. The Supplier shall provide the Platform and Product Content in accordance with what is stipulated in the Order, but the Supplier does not otherwise warrant that the Platform or Products Content will meet any individual requirements of the Customer. The Supplier is not responsible for anything not expressly stipulated in the Order that the Supplier will provide. The Customer is responsible for anything that it needs to obtain from someone other than the Supplier. Except for any matter upon which the Supplier specifically agrees in writing with the Customer to advise or do, the Supplier shall not be responsible or have any liability for advising on, or failing to advise on, or doing, or failing to do, anything else. OTHER THAN AS SPECIFIED HEREIN, THE SUPPLIER AND ITS AFFILIATES AND LICENSORS HEREBY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE.
- 6.5. The Supplier shall use all reasonable efforts to ensure that the information and ideas contained, suggested or referenced in the Product Content are accurate and up-to-date. The Product Content is for general guidance only. The Customer agrees that it is its responsibility to obtain professional or specialist advice before taking, or refraining from, any action on the basis of the Product Content.
- 6.6. Unless otherwise agreed in writing in the Order, the Supplier shall provide all Services and Product Content in the English language only and the Supplier shall not be responsible for any translations from English.
- 6.7. Where the Supplier is providing any Consulting Services, it shall use all reasonable efforts to perform its obligations within any timescales set out in

the Order, but the Supplier shall not have any liability for any delays or failure to accurately perform its obligations:

- 6.7.1. if it has used those efforts; or
- 6.7.2. to the extent caused by any failure or delay in anything that the Customer or the Customer's Affiliates or Users need to provide or by any breach by the Customer of the Contract.
- 6.8. If there is any slippage in time, the Supplier shall use all reasonable efforts to reschedule delayed tasks to a mutually convenient time.
- 6.9. The Supplier shall comply with the Service Level Schedule.
- 6.10. Subject to the remedies under the Service Level Schedule, the Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities not within its control, including the internet, and the Customer acknowledges that access to the Platform may be subject to limitations, delays and other problems inherent in the use of such communications facilities, and accordingly the Supplier does not warrant that access to the Platform will be uninterrupted or error-free or that it will be available at any particular speed.
- 6.11. Although the Supplier uses a firewall and takes steps against Contaminants and uses virus and content filtering software in accordance with Good Industry Practice, the Supplier cannot guarantee 100% security and shall not have any liability for damage to, unauthorized access to, or Contaminants that may affect, the Product Content, Platform or any computer equipment, software, data or other property. The Supplier shall also not have any liability for the actions of third parties in breaching any security measures.
- 6.12. Except where expressly provided for within these SaaS Terms, the Supplier excludes all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Product Content, Platform and Services. THE SUPPLIER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE SUPPLIER MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCT CONTENT, PLATFORM OR RESULTS OF THE USE THEREOF WILL MEET THE CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SUPPLIER STRICTLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND LIABILITY WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

## 7. SUPPORT SERVICES

- 7.1. Where the Supplier offers support Services for a particular Service they shall be as specified in the Service Level Schedule and be made available during the Subscription Term.
- 7.2. The Customer shall report any problems or errors using the method set out in the Service Level Schedule, giving full details of: (i) the Customer's information; (ii) the relevant User; (iii) a full description of the problem or error; and (iv) any other relevant information reasonably requested by the Supplier.
- 7.3. The Supplier shall not provide support Services where problems or errors result from: (i) use of the Platform or Product Content contrary to the Supplier's instructions or the terms of the Contract; (ii) the Customer's or User's negligence; or (iii) a malfunction of hardware, Customer Systems or any software.

## 8. USAGE DATA

- 8.1. Notwithstanding anything to the contrary in these SaaS Terms, the Supplier may monitor the Customer's use of the Platform and collect and compile usage and operations data in connection with such use, including query logs, training performance information, and metadata (collectively "Usage Data"). As between the Supplier and the Customer, all right, title, and interest in Usage Data, and all intellectual property rights therein, belong to and are retained solely by the Supplier. The Supplier may (i) make Usage Data publicly available in compliance with Applicable Law, and (ii) use the Usage Data for any purpose to the extent and in the manner permitted under Applicable Law, including for the purposes of improving the Platform, developing new features of the Platform, marketing the Platform, and suggesting additional training modules or features of the Platform to the Customer and its Users based on the Supplier's analysis of the Usage Data provided that in each case Usage Data does not contain personal data relating to Users or Customer Confidential Information.

## 9. CUSTOMER RESPONSIBILITIES

- 9.1. The Customer shall not use or access the Platform or Product Content for any illegal or unlawful purpose, or any purpose which may bring the Supplier or its business, products or the services into disrepute.
- 9.2. The Customer shall comply with all reasonable instructions as to the use of and access to the Platform and Product Content which may be given by the Supplier from time to time in writing or posted on the Platform from time to time.
- 9.3. The Customer shall be responsible for ensuring that the Customer Systems meet the Minimum Specification indicated by the Supplier for the use thereof. The Supplier shall not be responsible for any failure of the Customer or the Customer's Affiliate or a User to access the Platform or Product Content to the extent caused by a failure of Customer Systems or the Customer to ensure that the Customer Systems meet the Minimum Specification.
- 9.4. The Customer hereby grants to the Supplier a non-exclusive, non-transferable license to use the Customer Content until the termination of the Subscription Term only for the purposes of providing the Services under the Contract.
- 9.5. The Customer shall not knowingly or negligently upload, post, publish, transmit or transfer to the Platform any Customer Content or any software, files or other material, or use any Customer Content, which: (i) is defamatory, illegal, obscene, threatening, abusive, or offensive (or is likely to be perceived as such); (ii) is in breach of or infringes any Intellectual Property Rights; (iii) is a Contaminant or otherwise likely to cause damage to, or adversely affect, data, software or the performance or availability of the Platform; (iv) is in breach of any Applicable Law; (v) contains any unauthorized advertising, promotion or solicitation; or (vi) materially misrepresents facts which may be damaging or injurious to the Supplier or its other customers or users.
- 9.6. Without prejudice to the other rights and remedies of the Supplier, the Supplier reserves the right to remove or amend any software, files, Customer Content or material which would be a breach of Condition 9.5.
- 9.7. The Customer shall not:
  - 9.7.1. interfere with any other person's use of a Platform or Product Content or otherwise act in a way that negatively affects another Customer's or user's use of or access to the Platform or Product Content; or
  - 9.7.2. cause the Platform or any of the Product Content to be interrupted, damaged, rendered less efficient or in any way impaired.
- 9.8. Except as may be expressly stated otherwise, the Supplier does not monitor, approve, endorse or exercise editorial control over any Customer Content, other subscribers or third parties, and, accordingly, the Supplier gives no warranty, representation or undertaking in respect of such information.
- 9.9. From time to time the Supplier may issue updates to the Platform. Depending on the update, the Customer and any User may not be able to access or use some or all of the Platform until the Customer and the User has undertaken necessary software updates.
- 9.10. The Customer shall make its own copies of User Data when it needs, or shall request from the Supplier the delivery of User Data in a format reasonably required as part of the Supplier's provision of Consulting Services.
- 9.11. The Customer shall promptly provide to the Supplier, Customer Content, information and assistance (including anything identified in the Order to be provided to the Supplier or as reasonably required by the Supplier) that will enable the Supplier to carry out fully, accurately and promptly its obligations.
- 9.12. The Customer shall not knowingly allow any individual under the age of eighteen (18) years old to use the Platform unless: (i) the Customer has received the Supplier's prior written approval, and (ii) the Customer and the Supplier execute a separate written agreement with additional terms related to the use, collection, and disclosure of information pertaining to individuals under the age of eighteen (18) years old.
- 9.13. The Customer shall not allow any User to use the Platform or Product Content in a manner that imposes an unreasonable or disproportionate load on the Platform or the Supplier's servers, hosting providers, or infrastructure.

## 10. CHARGES AND PAYMENTS

- 10.1. Unless otherwise set out in the Order or expressly agreed in writing by the Supplier, the Supplier shall invoice the Customer for the Charges in advance of the Customer's and its Affiliates' and its Users' ability to access or use any of the Platform for the Subscription Term.
- 10.2. Unless otherwise set out in the Order or expressly agreed in writing by the Supplier, the Supplier shall invoice the Customer for the Consulting Services Charges monthly in arrears for the Consulting Services supplied in that month (provided that the Supplier may require payment for any

known Consulting Services Charges in advance of providing the Consulting Services).

- 10.3. Unless otherwise agreed by the Supplier, the Customer and its Affiliates and its Users shall not have a right to access or use the Platform and Product Content until the Customer has paid the relevant Charges and taxes applicable in full.
- 10.4. If the laws of any part of the territory where the Customer is based require the Customer to withhold tax on any payment which the Customer is obliged to make to the Supplier, the Parties shall use all reasonable efforts to conduct their accounting arrangements where legally possible to avoid the application of withholding tax (such as for the Customer to contract and pay through a company in a jurisdiction where withholding tax would not apply). If withholding tax does apply, the Customer shall:
  - 10.4.1. obtain a proper receipt and discharge for the tax so deducted and forward it without delay to the Supplier;
  - 10.4.2. do all such other things and take such other steps as may be reasonably required to enable the Supplier to obtain any tax credit which may be available to it in connection with any tax payment; and
  - 10.4.3. in the event that any taxes deducted cannot be reclaimed or used by the Supplier as a credit against any tax payable by the Supplier, at such time as the Supplier reasonably requires make up to the Supplier any shortfalls in payment attributable to such tax deductions.
- 10.5. If the Customer is late in paying any part of any monies due to the Supplier, the Supplier may (without prejudice to any other right or remedy available to it) give the Customer at least five (5) Business Days' notice that it is suspending the Customer's and its Affiliates' and Users' access to the Platform and Product Content with immediate effect until the Supplier receives the outstanding amounts in full.

## 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. The Customer hereby acknowledges that, as between it and the Supplier, all Intellectual Property Rights in the Platform and the Product Content are owned by or licensed to the Supplier. Except pursuant to the license, nothing in these SaaS Terms or the Contract shall operate to transfer or grant any rights in any Intellectual Property Rights in the Platform or Product Content to the Customer, a User or any person.
- 11.2. The Supplier shall own all Intellectual Property Rights in Product Developments, subject to it either replacing any Customer Content with generic content or reproducing such Product Developments without Customer Content. To the extent that the Supplier is not otherwise the owner, the Customer hereby assigns to the Supplier (by way of present and future assignment of copyright) all such Intellectual Property Rights in Product Developments (without Customer Content).
- 11.3. The Supplier hereby acknowledges that, as between it and the Customer, all Intellectual Property Rights in the Customer Content are owned by or licensed to the Customer. Except for the Customer Content license in the Contract, nothing in the Contract shall operate to transfer or grant any rights in any Intellectual Property Rights in the Customer Content to the Supplier or any person.
- 11.4. The Supplier reserves the right to revise or amend the format and/or content of the Platform and Product Content from time to time, provided that if it does so, it shall use all reasonable efforts to ensure that there is no adverse change in the content, quality or performance of the Platform or the Product Content.
- 11.5. Except to the extent expressly permitted in the Contract or at law, the Customer shall not directly or indirectly reproduce, copy, publish, post, broadcast, transmit, disseminate, sell, rent, license, distribute, circulate, make available, alter, vary, modify, translate, disassemble, decompile, recompile, reverse engineer, or create derivative works of the Platform or Product Content or infringe the Supplier's Intellectual Property Rights, or enter into an arrangement, agreement or understanding which would or might allow or encourage a third party to do so. The Supplier shall make available any necessary interoperability information on request, subject to the Customer first paying the Supplier's reasonable fee for doing so.
- 11.6. The Customer shall promptly inform the Supplier in writing in the event that it becomes aware of any unauthorized use of or access to the Platform or Product Content or any actual or suspected infringement of any of the Supplier's Intellectual Property Rights, and the Customer shall provide all further cooperation reasonably requested by the Supplier.
- 11.7. The Supplier shall promptly inform the Customer in writing in the event that it becomes aware of any unauthorized use of or access to the Customer Content or any actual or suspected infringement of any of the Customer's Intellectual Property Rights, and the Supplier shall provide all further cooperation reasonably requested by the Customer.
- 11.8. The Customer shall permit the Supplier and the Supplier's representatives at all reasonable times and on reasonable prior written notice to enter such places and inspect such equipment under the Customer's and its Affiliates'

control and monitor the Customer's and its Affiliates' and Users' use of and access to the Platform and Product Content (whether remotely or not) to verify that the Customer and the Customer's Affiliates and Users are complying with the terms of the Contract and the User Rules and not infringing the Supplier's or its licensors' Intellectual Property Rights.

- 11.9. The Customer acknowledges that it has no right to have access to the Platform in source code form.
- 11.10. The Customer shall not (i) attack the title or any rights of the Supplier in or to the Platform and the Product Content, or (ii) claim any right, title or interest in or to the Platform and the Product Content.
- 11.11. If the Customer or any of its employees or Users sends or transmits any communications or materials to the Supplier by mail, email, telephone, or otherwise, suggesting or recommending changes to the Platform or Product Content, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (collectively, "**Feedback**"), the Supplier is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. The Customer hereby assigns to the Supplier on the Customer's behalf, and on behalf of its employees and Users, all right, title, and interest in, and the Supplier is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although the Supplier is not required to use any Feedback.

## 12. DATA PROTECTION

- 12.1. The Data Protection Addendum available at <https://www.qa.com/legal-privacy/> is incorporated into these SaaS Terms.
- 12.2. The Supplier shall be a Data Processor where it is Processing Personal Data (as all terms are defined in the Data Protection Addendum) for the purpose of its role in delivering Services to the Customer's Users.
- 12.3. The Customer acknowledges and agrees that the Platform is not designed for, and the Customer shall not upload, transmit, or otherwise make available to the Supplier via the Platform or otherwise, any "highly regulated data," which means any (i) information subject to or regulated by the US Health Insurance Portability And Accountability Act of 1996 (including protected health information); (ii) information pertaining to individuals under the age of 18 years old (and the Customer shall not permit or allow any individual under the age of 18 years old to access or use the Platform); (iii) sensitive categories of data, including information related to a person's racial or ethnic origin, religious or philosophical beliefs, political affiliation or activities, trade union membership, mental or physical health, sexual orientation, genetic information, credit status, moral character; or (iv) any other information or data that is subject to heightened regulatory requirements. Any submission by the Customer or any authorized user of highly regulated data is made at the Customer's sole risk, and the Supplier shall not be responsible or liable for any liability, loss, fines, fees, expenses, or other damages of any kind, whether direct or indirect, arising from or related to any highly regulated data.

## 13. CONSEQUENCES OF TERMINATION AND EXPIRATION

- 13.1. Upon termination or expiration of the Contract for any reason:
  - 13.1.1. all outstanding Charges for Services provided or in the process of being created for delivery shall become payable;
  - 13.1.2. the Customer shall, and shall require that all applicable Users shall, immediately cease accessing and using the Platform and any Product Content and cease using any username or password in relation to the Platform;
  - 13.1.3. the Customer shall, and shall require that all applicable Users shall, immediately delete or remove the App from all Customer Systems and immediately destroy all copies of the App in their possession, custody or control; and
  - 13.1.4. subject to the Customer paying any applicable Consulting Services Fees in advance, promptly following the Customer's written request, the Supplier shall provide or make available User Data in a form reasonably required by the Customer.
- 13.2. In the event of termination by the Customer pursuant to Condition 11.1 of the General Terms, the Supplier shall pay to the Customer an amount equivalent to the Charges pro-rated to reflect the unused Subscription Term or unused Licenses as applicable.
- 13.3. If the Customer has ordered Licenses but Licenses covered within the Order have been used or accessed by Users within the Subscription Term, the rights for access to those Licenses shall expire notwithstanding that they have been paid but remained unused by the Customer or the User.
- 13.4. Termination by the Supplier of a Contract in accordance with Condition 11.1 or 11.2.2 of the General Terms shall permit the Supplier to terminate any or all Orders in place between the Supplier and the Customer or any Affiliate of the Customer.

#### **14. SUSPENSION**

- 14.1. The Supplier reserves the right to suspend or disable access to and use of any portion or all of the Platform and Product Content by the Customer and the Customer's Affiliates and Users if:
- 14.1.1. The Supplier reasonably suspects that the Customer or any of the Customer's Affiliates or any User is in breach of the Contract or the User Rules; or
- 14.1.2. The Supplier reasonably believes that there is likely to be or has been a breach of security, or misuse of any username or password of the Customer or the Customer's Affiliates or its Users or use of the Platform or Product Content by an individual or organization who is not (or no longer is) a User; or
- 14.1.3. the Customer or any of the Customer's Affiliates or any User is misusing or there is threat of misuse of the Platform or Product Content or is infringing the Supplier's or the Supplier's Affiliates' Intellectual Property Rights; or
- 14.1.4. the Customer's or any User's use of the Platform or Product Content disrupts or poses a security risk to the Supplier or to any other customer or supplier of the Supplier.
- 14.2. Suspension under Condition 14.1 may be without notice and whether by use of a code, by disabling access on its servers, by remote access or by physical attendance at any place where the Platform or Product Content is being accessed from or otherwise.
- 14.3. If the Supplier suspends or disables access to and use of the Platform and Product Content by the Customer and the Customer's Affiliates and Users pursuant to Condition 14.1, it shall promptly inform the Customer following such suspension providing the Customer with reasons for such suspension in order that the Customer can address the concerns raised by the Supplier and/or remedy the same to the Supplier's reasonable satisfaction, at which point the Supplier shall lift the suspension. The Supplier will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that the Customer or any User may incur as a result of a suspension under Condition 14.1.

#### **15. GENERAL**

- 15.1. All provisions, which by their nature or context require survival to fulfil their essential purpose, shall survive any expiration or termination of the Contract, including Condition 8 (Usage Data), 6 (Warranties and Disclaimer), 11 (Intellectual Property Rights), 13 (Consequences of Termination and Expiration), and 15 (General).
- 15.2. The Supplier may make minor changes or amendments to these SaaS Terms or the User Rules at any time without notice to the Customer or User by either posting changes online or through the Platform. The Customer and Users are responsible for regularly reviewing information posted through the Platform in order to obtain timely warning of such changes. Continued access or use of the Platform by the Customer or User after such changes have been posted constitutes acceptance of such changes. At the Supplier's option, the Customer or the User may be required to read and accept any changes to the User Rules in order to continue to use the Platform.
- 15.3. To the extent that a Condition of the Contract is of such a character that a breach thereof by either party will result in irreparable damage and injury to the other for which there will be no adequate remedy at law, a party shall have the right and remedy to have such Condition specifically enforced by any court having equity jurisdiction, without the posting of a bond or other security, it being agreed that in any proceeding for an injunction, and upon any motion for a temporary or permanent injunction, the ability to answer in damages shall not be a bar or interposed as a defense to the granting of such injunction. The provisions of this Condition 15.3 shall survive the termination of the Contract.
- 15.4. US Government Rights. Each of the Product Content and software that constitute the Platform is a commercial item as that term is defined at 48 C.F.R. § 2.101, consisting of commercial computer software and commercial computer software documentation as such terms are used in 48 C.F.R. § 12.212. Accordingly, if the Customer is an agency of the US Government or any contractor therefore, the Customer only receives those rights with respect to the Platform and Product Content as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

## Appendix 1 - SLAs

### Service-Level Agreement (SLA)

1. SLA Definitions. Capitalized terms used in this SLA but not otherwise defined herein shall have the following meanings. All other capitalized terms used but not defined in this SLA shall have the meanings set forth in the SaaS Terms.

1.1 "Available" means that the core features and functionality of the Platform are accessible by the Customer and the Authorized Users.

1.2 "Excused Downtime" means any time during which the Platform is not Available due to: (A) scheduled or unscheduled maintenance, updates, upgrades, improvements, patches, or other modifications to the Platform made by Supplier; (B) periods during which the Customer's or any Authorized User's access to the Platform has been suspended by the Supplier in accordance with the SaaS Terms; (C) downtime attributable to a force majeure or other event outside of Supplier's reasonable control, including Acts of God, telecommunications failures, fire, disaster, flood, earthquake, or acts of government.

1.3 "Downtime Percentage" means 99.5% minus the actual Monthly Uptime Percentage in any calendar month.

1.4 "Monthly Uptime Percentage" means (the number of minutes the Platform was Available in any calendar month) divided by the outcome of: (the total number of minutes in the applicable month minus the number of minutes of Excused Downtime in that month).

1.5 "Service Credit" a credit of the pro-rated amount of money equal to the Downtime Percentage multiplied by the monthly subscription fee payable by the Customer for use of the Platform in the affected calendar month.

2. SLA Commitment. The Supplier shall exercise reasonable efforts to achieve a minimum Monthly Uptime Percentage of at least 99.5% of the time in any full calendar month during which the Customer is authorized to use the Platform in accordance with the applicable Order Form.

3. Service Level Credits. Subject to the exclusions set forth below, in the event that the Platform's Availability falls below the Minimum Uptime Percentage in any calendar month, the Customer's sole and exclusive remedy, and the Supplier's sole and exclusive liability, shall be for the Supplier to issue the Customer a Service Credit against the Customer's next invoice. Regardless of the actual Downtime Percentage in any Calendar Month, the maximum Service Credit that the Customer may receive in any calendar month is 20% of the aggregate monthly subscription fees payable by the Customer for use of the Platform during such month.

4. Requirements. The Customer's receipt of Service Credits is expressly contingent on: (A) the Customer informing the Supplier in writing, within five (5) days of the last day in any calendar month, of the amount of time that the Platform was not Available in such month and the amount of the Customer's requested Service Credit; (B) the Customer providing reasonably detailed evidence to corroborate the Customer's claim that the Platform was not Available; (C) the Customer being current on all payment obligations under each Order Form and having no outstanding invoiced amounts; and (D) the Customer and each Authorized User being in full compliance with all provisions of the SaaS Terms and any other agreement between the Customer and the Supplier. The Supplier shall evaluate the Customer's request for Service Credits and make a decision on whether to issue such Service Credits within sixty (60) days of receipt of the Customer's request for the same. The Supplier may deny Service Credits in its reasonable discretion.

5. Exclusions. This SLA does not apply to, the Customer shall have no right to receive Service Credits for, and the Supplier shall have no obligation to provide Service Credits in the event that any portion of the Downtime Percentage is related to: (A) the Customer or any Authorized User's breach of the SaaS Terms or any other agreement between the Supplier and the Customer; (B) the Customer's combination of the Platform with any other software, hardware, technology, or other materials not supplied by Supplier; (C) errors caused by the Customer's or any Authorized User's own internet network, device, or other telecommunications service or equipment; (D) failures or errors in Third-Party Products; (E) the Customer's or any Authorized User's modification of the Platform; (F) the Supplier's reliance on any instructions or specifications provided by the Customer or any Authorized User; (G) failures or errors made by the Supplier's third-party hosting providers (including AWS, Azure, and Alibaba); (H) the Customer's or any Authorized User's use of the Platform on any unsupported browser or device; (I) user error on behalf of any Authorized User; or (J) downtime that cannot be substantiated by the Supplier's or the Customer's logs or records.