

QS 1Mentor Terms

Description

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[Back to all Terms & Conditions](#)

QS 1Mentor Terms

1. Interpretation

The definitions in this clause apply in these QS 1Mentor Terms. Other defined terms shall have the meaning ascribed to them in the General Agreement between QS and the Customer and in the QS General Terms and Conditions.

Additional Services: services purchased by the Customer pursuant to clause 3 of these Terms

Authorised Users: those employees, agents, independent contractors and students of the Customer who are authorised by the Customer to use the 1Mentor Services, as further described in clause 2.2(d).

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

Commencement Date: the commencement date of the 1Mentor Services, as specified in the Order.

Customer Data: the data inputted by the Customer, Authorised Users, or QS on the Customer's behalf for the purpose of using the 1Mentor Services or facilitating the Customer's use of the 1Mentor Services.

Initial Subscription Term: the initial term as set out in the Order.

Normal Business Hours: 9.00 am to 5.00 pm ECT, each Business Day.

Renewal Period: the period described in clause 9.1.

1Mentor Services: the 1Mentor services provided by QS to the Customer as more particularly described in the Order and including any Additional Services.

Software: the online software applications provided by QS as part of the 1Mentor Services.

Subscription Term: has the meaning given in clause 9.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy: QS's policy for providing support in relation to the 1Mentor Services as

made available to the Customer from time to time.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

2. Use of the 1Mentor Services by Authorised Users

2.1 Subject to the Customer paying the Fees and the other terms and conditions of this Agreement, QS hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the 1Mentor Services during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that:

(a) the maximum number of Authorised Users that it authorises to access and use the 1Mentor Services shall not exceed the number specified in the Order;

(b) it will not allow or suffer any login to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the 1Mentor Services;

(c) each Authorised User shall keep a secure password for their use of the 1Mentor Services, that such password shall be changed regularly and that each Authorised User shall keep their password confidential;

(d) it shall maintain a written, up to date list of current Authorised Users and provide such list to QS within 10 Business Days of QS's written request at any time or times;

(e) if the Customer has underpaid Fees to QS, then without prejudice to QS's other rights, the Customer shall pay to QS an amount equal to such underpayment as calculated in accordance with the prices set out in the Order.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the 1Mentor Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and QS reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the 1Mentor Services in order to build a product or service which competes with the 1Mentor Services; or
- (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the 1Mentor Services available to any third party except the Authorised Users, or
- (d) attempt to obtain, or assist third parties in obtaining, access to the 1Mentor Services, other than as provided under this clause 2; or
- (e) introduce or permit the introduction of, any Virus or Vulnerability into QS's network and information systems.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the 1Mentor Services and, in the event of any such unauthorised access or use, promptly notify QS.

3. Additional Services

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase Additional Services and QS shall provide such Additional Services in accordance with the provisions of this agreement.

3.2 If the Customer wishes to purchase Additional Services, the Customer shall notify QS in writing. QS shall evaluate such request for Additional Services and respond to the Customer with approval or rejection of the request.

3.3 If QS approves the Customer's request to purchase Additional Services, the Customer shall within 30 days of the date of QS's invoice, pay to QS the relevant fees for such Additional Services as set out in the Order or, where no such rate is specified, at QS's current applicable rate; or

4. 1Mentor Services

4.1 QS shall, during the Subscription Term, provide the 1Mentor Services to the Customer on and subject to the terms of this agreement.

4.2 QS shall use commercially reasonable endeavours to make the 1Mentor Services available, except for:

(a) planned maintenance which shall be carried out within Normal Business Hours; and

(b) unscheduled maintenance performed outside Normal Business Hours, provided that QS has used reasonable endeavours to give the Customer notice in advance.

4.3 QS will, as part of the 1Mentor Services and in consideration of the maintenance and support fees set out in the Order, provide the Customer with QS's standard customer support services during Normal Business Hours in accordance with QS's Support Services Policy in effect at the time that the 1Mentor Services are provided. QS may amend the Support Services Policy in its sole and absolute discretion from time to time.

5. Data protection

5.1 Both Parties agree to comply with any applicable privacy and data protection laws.

5.2 The parties undertake to act in accordance with the separate data protection agreement, which shall be entered into within 28 days of the date of this Agreement. No Customer Data may be entered into the Software until such data protection agreement has been agreed and executed by both Parties.

6. QS's obligations

6.1 QS undertakes that the 1Mentor Services will be performed with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the 1Mentor Services contrary to QS's instructions, or modification or alteration of the 1Mentor Services by any party other than QS or QS's duly authorised contractors or agents. If the 1Mentor Services do not conform with the foregoing undertaking, QS will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3 QS:

(a) does not warrant that:

- (i) the Customer's use of the 1Mentor Services will be uninterrupted or error-free; or
- (ii) that the 1Mentor Services will meet the Customer's requirements;

(b) 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, including the internet, and the Customer acknowledges that the 1Mentor Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 This agreement shall not prevent QS from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

6.5 QS warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

6.6 QS shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against QS shall be for QS to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by QS in accordance with the archiving procedure. QS shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except any third parties sub-contracted by QS to perform services related to Customer Data maintenance and back-up) for which it shall remain fully liable.

7. Customer's obligations

7.1 The Customer shall:

(a) provide QS with:

- (i) all necessary co-operation in relation to this agreement; and
- (ii) all necessary access to such information as may be required by QS;

in order to provide the 1Mentor Services, including but not limited to Customer Data, security access information and configuration services;

(b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;

(c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, QS may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorised Users use the 1Mentor Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for QS, its contractors and agents to perform their obligations under this agreement, including without limitation the 1Mentor Services;

(f) ensure that its network and systems comply with the relevant specifications provided by QS from time to time; and

(g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to QS's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.2 The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Customer Data that is not personal data.

8. Charges and payment

8.1 The Customer shall pay the Fees to QS for the 1Mentor Services in accordance with this clause 8 and the Order.

8.2 The Customer shall on the Commencement Date provide to QS approved purchase order information acceptable to QS and any other relevant valid, up-to-date and complete contact and billing details and, QS shall invoice the Customer:

(a) in respect of the Initial Subscription Term, on the dates specified in the Order; and

(b) at least 30 days prior to each anniversary of the Commencement Date for the Fees payable in respect of the next Renewal Period, and the Customer shall pay each invoice within 30 days after the date of such invoice.

8.3 QS shall be entitled to increase the Fees payable in respect of the 1Mentor Services at the start of each Renewal Period upon 100 days' prior notice to the Customer and the Order shall be deemed to have been amended accordingly.

9. Term and termination

9.1 This agreement shall, unless otherwise terminated as provided in this clause 9, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

(a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy;

9.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the 1Mentor Services;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (c) QS may destroy or otherwise dispose of any of the Customer Data in its possession unless QS receives, no later than ten days after the Commencement Date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. QS shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by QS in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

[Back to all Terms & Conditions](#)

[table id=12 /]