CLOUD SERVICES AGREEMENT

This Cloud Services Agreement governs one or more Order Documents or Work Orders that reference this Agreement. "Customer" means the customer entity that executed the Order Document or Work Order. For Order Documents or Work Orders where Customer is located in North America or Latin America, "Vendor" means QAD Inc. or, for Connected Workforce (aka Redzone) Services, "Vendor" means Verifract, LLC. For Order Documents or Work Orders where Customer is located in Europe, Middle East, Africa or Asia/Pacific, "Vendor" means QAD Europe (Netherlands) B.V.

WHEREAS Vendor makes its enterprise applications and related offerings available to customers in a hosted environment (the "Cloud Services") that is maintained by Vendor and provides professional services in support of such offerings; and

WHEREAS this Agreement outlines the terms and conditions under which Customer can purchase such services from Vendor,

NOW THEREFORE, the parties agree as follows:

Article 1 Definitions

1.1   <u>Affiliate</u> means legal entities affiliated with Customer, which are directly or indirectly controlling, controlled by or under common control with the Customer. For these purposes "control" means that a company a) directly or indirectly holds more than 50% of the nominal value of the issued share capital, or b) has more than 50% of the voting power at general meetings; or c) has the power to appoint a majority of the directors; or d) otherwise maintains core control of such entity.

1.2   <u>Agreement</u> means this Cloud Services Agreement together with any amendments thereto as well as any Order Documents and amendments thereto (including the referenced Cloud Program Document) and Work Orders and amendments thereto, entered into under this Cloud Services Agreement.

1.3   <u>Cloud Program Document</u> means a document that defines the Cloud Services to be purchased and delivered under an Order Document. The Cloud Program Document is available on http://www.qad.com/legal.html.

1.4   <u>Cloud Services</u> means access to the software identified in an Order Document, including hosting, management and operation of such software as well as the provision of support for such software.

1.5   <u>Customer</u> means the customer entity that is the signatory to this Agreement as well as any Affiliate that directly executes an Order Document or Work Order.

1.6   <u>Customer Data</u> means all electronic data or information submitted to and stored in the Cloud Service by Customer.

1.7   <u>Documentation</u> means Vendor's published user manuals and other technical and functional documentation of the Services made available to Customer by Vendor. The Documentation is provided in English and, when available, in other languages.

1.8   <u>Order Document</u> means a document executed by Customer and Vendor that provides for the purchase and delivery of Cloud Services under the terms of this Agreement, as further defined by the Cloud Program Document incorporated into the Order Document by reference.

1.9   <u>Personal Data</u> means any information related to any identified or identifiable person and any other additional data deemed as personal data under the applicable personal data protection laws.

1.10   Professional Services means the consulting, training or implementation services provided by Vendor pursuant to a Work Order.

1.11   Services means Cloud Services provided under an Order Document and/or Professional Services provided under a Work Order.

1.12   Standard Contractual Clauses means the standard agreements sanctioned under the European Commission's decision on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection. A pre-completed copy of the Standard Contractual Clauses (Controller to Processor version) is available on http://www.qad.com/legal.html.

1.13   Vendor Group of Companies means QAD Inc., a corporation domiciled in Delaware USA, and any directly or indirectly held subsidiaries of QAD Inc.

1.14   Work Order means a document executed by Customer and Vendor that provides for the purchase and delivery of Professional Services under the terms of this Agreement.

Article 2 Services

2.1   Ordering Services. Customer and Affiliates may elect to purchase Services under the terms of this Agreement by executing one or more Order Documents or Work Orders prepared by Vendor. An Order Document or Work Order becomes effective once fully executed by both parties. Cloud Services purchased under an Order Document shall be as defined in the Cloud Program Document incorporated into the Order Document by reference.

2.2   Use of the Services. Customer shall not interfere with or disrupt Vendor's operation of the systems used to host the Cloud Services or other equipment or networks connected to the Cloud Services. Customer shall follow Vendor's reasonable instructions on how to use the Cloud Services. Customer shall not use the Cloud Services for any illegal or harassing or other inappropriate purposes, including, without limitation, circumvention of user authentication or security controls, unauthorized access to data, or violation of export control laws. Vendor reserves the right to suspend the Cloud Services to address a threat to the security of the Cloud Services or address a violation of law, in which case Vendor shall provide prompt notice of the suspension and shall resume provision of the Cloud Services promptly following resolution of the issue.

2.3   Cooperation. Customer acknowledges that the timely provision of, and access to, assistance, cooperation, complete and accurate information from its officers, agents, and employees are required to enable Vendor to provide the Services.

2.4   Development Tools. Vendor may provide certain development tools which Customer may use subject to the following conditions: (i) Customer may use the resulting developments exclusively for Customer's own business purposes and only together with the software made available to Customer hereunder; (ii) Customer shall not make the developments available to any other person; (iii) Customer shall follow instructions and guidelines published by Vendor for using the development tools and for promoting developments into the cloud environment; (iv) Customer acknowledges and agrees that Vendor makes no warranty with respect to developments created by Customer, and that Vendor is not responsible for any adverse impact on Cloud Services performance caused by such developments; and (v) the Progress Software Corporation development tools may be used only to install, support, localize or customize the software made available to Customer hereunder.

2.5   Affiliates. All terms of this Agreement that protect the rights of Customer (e.g. confidentiality and the protection of Personal Data) shall equally apply to Affiliates that make use of the Services. Customer shall be responsible for compliance with this Agreement by any Affiliate that receives Services hereunder.

Article 3 Warranties

3.1 <u>Cloud Services Warranty</u>. Vendor warrants that, for the period during which Cloud Services are provided, the Cloud Services shall function in accordance with the Documentation and the Cloud Program Document and that the provided software shall be free from material program errors and shall function substantially in accordance with the Documentation. Vendor does not warrant that the software is completely error free. If Vendor is unable, after reasonable efforts following receipt of Customer's detailed warranty claim, to make the software perform as warranted, Customer's remedy shall be to terminate the use of the Cloud Services and in such event, Vendor shall refund to Customer the fees paid for the affected Cloud Services for the period during which the defect existed plus any prepaid and unused fees for such affected Cloud Services. This warranty shall not apply to any malfunction or error resulting from improper use of the Cloud Services by Customer or to malfunctions or errors caused by Customer-sourced (third-party) or Customer-developed services, software, Customer Data or other materials. This warranty shall apply to the extent that Customer permits the installation of all fixes, new releases, hardware and software updates recommended by Vendor. The warranties concerning availability of the Cloud Services are documented in the Cloud Program Document.

3.2 <u>Professional Services Warranty</u>. Vendor warrants for a period of 90 days after the acceptance date, or in case no acceptance test applies, for a period of 90 days after delivery, that the Professional Services provided by Vendor under the Agreement shall be performed in a professional and workmanlike manner consistent with industry standards and that any deliverables provided as part of the Professional Services shall be substantially free from material program errors and shall function substantially in accordance with the applicable Work Order or other specifications agreed in writing by the parties. Any warranty claim by Customer must be detailed in writing and must be delivered to Vendor within the 90-day warranty period. If Vendor delivers a fix in response to a warranty claim by Customer, then an extended warranty period shall apply for the 30 days after the fix is delivered. If Vendor is unable, after reasonable efforts following receipt of Customer's detailed warranty claim, to make the Professional Services or the deliverable comply with this warranty, Customer's sole remedy shall be to terminate the use of the Professional Services or the deliverable and in such event, Vendor shall refund to Customer the fees paid by Customer for the affected portion of the Professional Services.

3.3 <u>Security</u>. Vendor will implement and maintain appropriate technical and organizational measures, as documented in the Cloud Program Document, to ensure the continued confidentiality, integrity and availability of the Cloud Services and any data contained therein.

3.4 <u>Content</u>. Vendor may provide as part of the Services third-party content, such as trade or compliance content. This content is provided "as is", and Vendor makes no warranty as to the accuracy or completeness of such content. Customer uses such content at its own risk, and Vendor shall have no liability to Customer or any third party based on Customer's use of or reliance on such content.

3.5 <u>Limitations</u>. The limited warranties provided in this Agreement are in lieu of all other warranties, express or implied. To the maximum extent permitted by applicable law, no other warranty is made hereunder by Vendor and all other warranties and conditions (including merchantability and fitness for a particular purpose), either express or implied, are excluded.

Article 4 Fees and Payment

4.1 <u>Invoicing</u>.

    a) Beginning on the Start Date of the term specified in an Order Document and continuing thereafter for each invoice period as documented in an Order Document, Vendor shall invoice Customer for

the Cloud Services specified in the Order Document. Invoices for the Cloud Services shall be issued at least 30 days in advance of the start of the invoice period.

b) In the event an Order Document automatically renews under this Agreement, then for each successive annual period the Cloud Services fee rates shall be the same as the rates for the previous annual period, plus an increase equal to six percent.

c) Invoices for Professional Services provided on a time and materials basis shall be issued monthly in arrears. Invoices for fixed-fee Professional Services shall be issued as provided in the Work Order.

4.2 Expenses. Customer shall reimburse Vendor for documented and reasonable travel and out-of-pocket expenses incurred in conjunction with Professional Services. Vendor's standard policies concerning travel and living shall apply.

4.3 Payment. Payments for all fees due under the Agreement shall be due within 30 days of the invoice date. In the event of a payment default Vendor may, upon notice, declare the entire unpaid sum of Cloud Services fees for the full initial term (or renewal term as applicable) immediately due and payable.

4.4 Interest. Any amounts due to Vendor under this Agreement which are not paid within the agreed payment term shall incur interest at the rate of one-and-one-half percent (1½%) per month or any part of the month, or the maximum permitted by law, whichever is less. The interest shall be due only after a first notice of late payment has been issued by Vendor and shall then be calculated from the date payment is originally due under the Agreement until the date payment is made in full. Customer shall pay such interest, with all payments first being applied to interest and then to principal. Reasonable legal costs incurred by Vendor in enforcing its rights in relation to any overdue payment (including reasonable attorney fees) shall be paid by Customer to Vendor.

4.5 Taxes. Services fees are exclusive of all taxes, duties and fees. Customer shall make no deductions for taxes, duties or fees of any kind from any payment to Vendor under this Agreement. If Customer is required by law to withhold taxes, duties or fees, then Customer shall pay Vendor a gross amount of money, such that the net amount received by Vendor (after deducting or withholding the required taxes, duties or fees) is equal to the amount of the fee originally owed before subtracting such taxes, duties or fees. Taxes on the net income of Vendor are the responsibility of Vendor.

4.6 Vendor Group of Companies. Vendor reserves the right to assign the invoicing and/or the collection of payments to other entities in the Vendor Group of Companies.

Article 5 Confidentiality

5.1 Confidential Information. Both parties agree that any information obtained directly or indirectly, from the other party in connection with the Agreement and marked as "confidential" or "proprietary" or some similar legend or made known to the other party as being confidential or proprietary is the confidential or proprietary property of such party (hereinafter "Confidential Information"). Such information is deemed to include any Customer Data that would reasonably be deemed confidential. Information shall not be deemed Confidential Information, and the receiving party shall have no obligation with respect to any such information, which the receiving party can prove by written records:

– is already in the public domain other than by a breach of this Agreement on the part of the receiving party; or

– is rightfully disclosed to recipient by a third party which has the right to disclose the information and transmits it to the receiving party without any obligation of confidentiality; or

– is rightfully known to the receiving party without any limitation on use or disclosure prior to receipt of the same from the disclosing party; or

- is independently developed by personnel of the receiving party who have not had, either directly or indirectly, access to, or knowledge of, Confidential Information received from the disclosing party; or

- is generally made available to third parties by the disclosing party without any restriction concerning use or disclosure; or

- is approved for release by written authorization of the disclosing party; or

- is required to be disclosed by a court or governmental entity with jurisdiction over the receiving party, and the receiving party gives the disclosing party prompt written notice sufficient to allow the disclosing party to seek a protective order or other appropriate remedy, and the receiving party discloses only such information as is legally required and uses reasonable efforts to obtain confidential treatment of any information so disclosed.

5.2 <u>Treatment of Confidential Information</u>. It is agreed that Confidential Information under the Agreement shall: (a) be kept confidential by the receiving party; (b) be treated by the receiving party in the same way as the receiving party treats Confidential Information generated by itself; (c) not be used by the receiving party otherwise than in connection with the Agreement; and (d) not be divulged by the receiving party, except to its personnel who have a need to know and have undertaken to keep the Confidential Information confidential.

5.3 <u>Disclosure by Employees</u>. Both parties shall use all reasonable steps to ensure that Confidential Information received under the Agreement is not disclosed by its employees or agents in violation of this Article.

Article 6 Personal Data

6.1 <u>Processing and Use of Personal Data</u>. Vendor may process and use the Personal Data only to perform its obligations or exercise its rights under the Agreement and may disclose them only to Vendor's employees and agents that have a need to know and are bound by appropriate confidentiality obligations. When processing Personal Data Customer and Vendor will each observe all Personal Data protection laws applicable to their respective roles of data controller and data processor.

6.2 <u>Additional Obligations</u>. Vendor agrees (a) to maintain reasonable security measures for the protection of Personal Data, as further outlined in this Agreement and in the Cloud Program Document; (b) to act only on instruction from Customer in connection with protecting, collecting, storing, transferring and otherwise processing of Personal Data (Customer's instructions may be implied or of a general nature); (c) not to copy or reproduce any Personal Data without the express written permission of Customer, except as technically necessary to comply with this Agreement; and (d) to inform Customer promptly in writing if it becomes aware of any unauthorized use or disclosure of Personal Data by itself or others.

6.3 <u>Export of Personal Data and Standard Contractual Clauses</u>. Customer acknowledges that Vendor does not control nor has knowledge of to whom Customer provides access to the Cloud Services and that providing access to the Cloud Services to persons located in other countries may constitute export of Personal Data by Customer. Customer is responsible for ensuring that appropriate arrangements are in place to cover such exports. To the extent Customer's operations based in the European Union / European Economic Area / United Kingdom utilize Vendor resources located outside of the European Union / European Economic Area / United Kingdom, the Standard Contractual Clauses shall apply to the export of personal data by Customer to Vendor and such Standard Contractual Clauses are incorporated by reference into this Agreement. Additionally, for Customers located in the United Kingdom, the International Data Transfer Addendum to the Standard Contractual Clauses shall apply. The Standard Contractual Clauses with the annexes completed and the Addendum are available on http://www.qad.com/legal.html.

6.4   Intended Use. Customer is aware and acknowledges that the Services offered by Vendor are focused on use in the context of manufacturing, supply chain management and related activities. As such, Vendor has the reasonable expectance that Customer only enters Personal Data into the Cloud Services that is relevant in such a context; typically, such information is limited to contact information. Customer understands that records related to access to and use of the Cloud Services (e.g. user names and usage logs) are maintained by Vendor. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired such Personal Data.

6.5   Sub-Processors. Customer acknowledges and agrees that Vendor may retain certain sub-processors. A current list of sub-processors is available on http://www.qad.com/legal.html. Any change in sub-processors shall be published at least 10 days prior to such change. If Customer objects to the use of a sub-processor, providing reasonable arguments, parties shall act in good faith to address and resolve the objection.

6.6   Assistance. Vendor shall render reasonable assistance to Customer to help Customer comply with applicable personal data protection laws. If such assistance falls outside of the definition of the contracted Services, such assistance shall be charged by Vendor at the normal Services rates.

6.7   Audits. Customer shall have the right to audit Vendor's compliance with its obligations with regard to the processing of Personal Data. Accordingly, Vendor shall make available certificates providing evidence of independent audits of Vendor's security practices and related activities. If Customer wishes to conduct an additional audit, Customer and Vendor shall agree on the date and the process in writing. In any event, an audit shall be limited to the Services provided for Customer. Customer acknowledges that access to data centers and other secure environments is not possible as such access would not be permitted under the applicable procedures required to be followed by Vendor or its suppliers to maintain certain certifications (e.g. ISO certifications). Any costs incurred by Vendor to facilitate a Customer audit shall be charged to Customer at Vendor's normal Services rates. Customer shall be fully liable for any damages caused by Customer during the conduct of an audit.

Article 7 Intellectual Property

7.1   Services. Vendor or its licensors shall retain all intellectual property rights in and to the Services and any work product developed or delivered by Vendor as part of the Services.

7.2   Customer Data. Customer Data is owned exclusively by Customer and Vendor shall not obtain any intellectual property or other rights in or to the Customer Data. Notwithstanding the foregoing, Vendor may use anonymized Customer Data for the sole purpose of providing, improving, and developing the Services.

Article 8 Indemnification for Intellectual Property Infringement

8.1   Vendor Intellectual Property Indemnification. Vendor shall defend, at its expense, any action brought against Customer based on the claim that the use of the Services, when used within the scope of this Agreement, infringes any third-party intellectual property rights. Vendor shall indemnify Customer for any damages finally awarded against Customer which are attributable to such claim, provided a) Customer promptly notifies Vendor of any suit or claim, b) Customer permits Vendor to defend, compromise, or settle the claim, and c) Customer gives Vendor the requested information and fully cooperates in defending, compromising or settling the claim.

8.2   Remedies. Vendor shall, in addition to indemnification, a) procure for Customer the right to use the Services, or b) replace or modify the infringing Services to make them non-infringing, or c) if the foregoing alternatives are not commercially reasonable, terminate the access to relevant parts of the Services and provide a refund of Services fees paid for the relevant part of the Services with respect to the 90 days prior to the date of termination or provide a refund of the fees paid for the deliverables, as the case may be.

8.3   Customer Intellectual Property Indemnification. Customer shall defend, at its expense, any action brought against Vendor based on a claim that any Customer-sourced (third-party) or Customer-developed services, software, Customer Data or other materials infringe any third-party intellectual property rights. Customer shall indemnify Vendor for any damages finally awarded against Vendor which are attributable to such claim, provided a) Vendor promptly notifies Customer of any suit or claim, b) Vendor permits Customer to defend, compromise, or settle the claim, and c) Vendor gives Customer the requested information and fully cooperates in defending, compromising or settling the claim.

8.4   Entire Liability. THIS ARTICLE STATES THE ENTIRE LIABILITY OF PARTIES WITH RESPECT TO INFRINGEMENT OF COPYRIGHTS, TRADE SECRETS, PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE USE OF THE SERVICES.

Article 9 Limitation of Liability

9.1   DAMAGES LIMITATION. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFITS OR REVENUE.

9.2   MONETARY LIMITATION. A PARTY'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES CUSTOMER PAID TO VENDOR OVER THE PREVIOUS TWELVE CALENDAR MONTHS UNDER THE ORDER DOCUMENT OR WORK ORDER GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM CUSTOMER'S USE OF A PARTICULAR SERVICE, SUCH LIABILITY SHALL BE LIMITED TO THE FEES CUSTOMER PAID VENDOR OVER THE PREVIOUS TWELVE CALENDAR MONTHS FOR SUCH SERVICE. THE FOREGOING MAXIMUM LIABILITY LIMIT SHALL NOT APPLY TO (1) DAMAGES ARISING FROM DEATH OR PERSONAL INJURY; OR (2) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (3) A PARTY'S INDEMNIFICATION OBLIGATIONS IN RELATION TO INTELLECTUAL PROPERTY INFRINGEMENT AS PROVIDED UNDER THE AGREEMENT.

Article 10 Term and Termination

10.1   Term. This Agreement shall remain in effect until terminated as provided herein. Either party may terminate this Agreement for convenience with 30 days' notice at any time while no Order Document or Work Order is in effect. Each Order Document shall be non-cancellable through the term stated therein and it shall thereafter automatically renew for subsequent non-cancellable one-year renewal terms (or longer renewal terms, if agreed upon in the Order Document) unless terminated by either party effective as of the end date of the term (or any subsequent anniversary thereof) by delivering notice 180 days prior to the permitted termination date. Non-renewal notices to be given to Vendor shall be delivered by email to renewal@qad.com.

10.2   Termination for Cause. Either party may terminate this Agreement or any Order Document or Work Order upon the other party's material breach thereof, provided the breaching party fails to remedy such breach within 30 days of receiving the terminating party's breach notice. If this Agreement is terminated for cause under this section, then any and all Order Documents and Work Orders hereunder shall be automatically terminated simultaneously.

10.3   Return of Materials. Upon termination of this Agreement for any reason or upon Customer's written request Vendor shall promptly return to Customer all Customer Data and other materials owned by Customer. At Vendor's discretion, the foregoing may be satisfied by Vendor giving Customer access to the Customer Data for a 60-day period, for Customer's retrieval, at no additional charge to Customer. AFTER THE 60-DAY PERIOD, VENDOR WILL PERMANENTLY DELETE THE

CUSTOMER DATA DURING VENDOR'S STANDARD DATA PURGE CYCLE, AND CUSTOMER WAIVES THEIR RIGHT TO RECEIVE A COPY OF SAID DATA AFTER SUCH PERIOD.

10.4 <u>Exit Services</u>. In the event of any expiration or termination of this Agreement, Vendor shall provide such assistance as agreed by parties to enable Customer to transition the provision of the Services provided by Vendor either in-house or to a third party. The scope and costs of such transitional assistance shall be agreed by Vendor and Customer in writing in a Work Order.

Article 11 Miscellaneous

11.1 <u>Law Applicable to this Agreement</u>. If QAD Inc. or Verifract, LLC is the contracting party, this Agreement shall be subject to and construed, interpreted, and applied in accordance with the laws of the State of Delaware, United States of America. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be determined by arbitration in Delaware USA before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The language of the arbitration shall be English. The arbitral award, which shall be final and binding on both parties, may be enforced in any court having jurisdiction thereof. Any discovery as part of the arbitration process shall include the right to subpoena. If QAD Europe (Netherlands) B.V. is the contracting party, this Agreement shall be construed, interpreted, and applied in accordance with the laws of The Netherlands. Any dispute arising in connection with this Agreement shall be solely within the jurisdiction of the competent court of Amsterdam. In any case, parties acknowledge and agree that the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement.

11.2 <u>Audit</u>. Vendor may audit Customer's use of the Services to verify that such usage is in accordance with the Agreement. Customer shall provide reasonable cooperation with such audits as Vendor may request.

11.3 <u>Insurance</u>.

    (a) <u>Required Coverage</u>. At all times during the term of this Agreement Vendor shall procure and maintain, at its sole cost and expense, insurance coverage in the following types and amounts:

- Commercial General Liability with limits no less than $2,000,000 for all claims each policy year. Such policy will include coverage for personal injury and property damage and also include contractual liability coverage.

- Worker's Compensation and employers' liability insurance with limits no less than the minimum amount required by applicable law for each accident, including occupational disease coverage.

- Cyber Liability Insurance / Errors and Omissions, including third party coverage, with limits no less than $5,000,000 for all claims each policy year.

    (b) <u>Policies.</u> All insurance required to be provided under this Agreement shall be issued by an insurance company that is AM Best rated A-VII or better.

    (c) <u>Certificates of Insurance</u>. Certificates of insurance evidencing all coverages described in this section shall be furnished to Customer on written request.

11.4 <u>References</u>. Customer agrees to act as a reference for Vendor upon request. Reference activities may include, but are not limited to:

a) Providing a written or verbal testimonial about Vendor's products and services.
b) Participating in a case study, customer story, e-Magazine, or showcase video highlighting the use of Vendor's products and services.

c) Engaging in reference calls with existing and prospective customers to share Customer's experience with Vendor's products and services.
d) Participating in a reference call, meeting with potential customers, panels session, or customer event to discuss Customer's experience with Vendor's products and services.
e) Allowing Vendor to use Customer's name and logo in marketing materials to showcase Customer's use of Vendor's products and services.
f) Providing Customer's experience with Vendor's products and services to industry analysts via live interviews and online surveys.

Customer understands that participating in reference activities is voluntary and that Customer may decline any specific request made by Vendor. Customer also agrees to provide truthful and accurate information about their experience with Vendor's products and services and to promptly inform Vendor if their opinion or experience changes.

Vendor shall respect Customer's time and schedule when making reference requests and to provide Customer with any necessary support or resources to facilitate the reference activities.

This section acknowledges the importance of Customer's satisfaction with Vendor's products and services and establishes a framework for reference activities. Customer agrees to participate in reference activities if they are satisfied with Vendor's products and services.

11.5 <u>Legal Construction</u>. To the extent that any law, statute, treaty, or regulation by its terms as determined by a court, tribunal, or other government authority of competent jurisdiction, conflicts with this Agreement, the conflicting terms of this Agreement shall be superseded only to the extent necessary by the terms required by such law, statute, treaty, or regulation.

11.6 <u>Purchase Order Terms and Conditions</u>. Additional or different terms or conditions appearing on Customer's purchase order shall be deemed null and void.

11.7 <u>Segmentation</u>. Purchases of Services under an Order Document or Work Order are each separate and independent from other purchases of Services. Customer's obligation to pay for Services fees is not contingent on performance of any separately purchased Services.

11.8 <u>Assignment</u>. Neither party shall assign or transfer its interest in the Agreement or any Order Document or Work Order to a third party without the other party's prior written consent. Notwithstanding the foregoing, Vendor may assign this Agreement and any Order Documents or Work Orders to a member of the Vendor Group of Companies under any conditions or to an unrelated company pursuant to the sale, merger or other consolidation of Vendor or any of its operating divisions.

11.9 <u>Staffing and Subcontracting</u>. Vendor will, at its sole discretion, decide which staff is used to perform the Services. Vendor may subcontract the Services in whole or in part provided that Vendor will continue to warrant the Services under the terms and conditions of the Agreement.

11.10 <u>Personnel</u>. Customer shall not hire any employee of Vendor or of Vendor's subcontractors that has been directly involved in the provision of Professional Services to Customer during the term of the Agreement and for 180 days after termination of the Agreement unless Customer pays to Vendor an amount equal to twelve months of such employee's then-current compensation.

11.11 <u>Force Majeure</u>. Neither party shall be liable for delays or non-performance if such delays or non-performance are beyond such party's reasonable control provided the party takes reasonable steps to remedy the delay or non-performance promptly.

11.12 <u>Waiver</u>. The waiver by any party of a breach or default by the other party of any provision of this Agreement shall not be construed as a waiver by such party of any succeeding breach or default by the other party of the same or another provision.

11.13 <u>Notices</u>. Non-renewal notices to be given to Vendor shall be sent by email to renewal@qad.com. All other notices to Vendor shall be sent to legal@qad.com. Each party shall notify the other in writing in the event of any address change. Notices to Customer shall be to either Customer's physical address appearing at the beginning of this Agreement or to a verifiable Customer email address.

11.14 <u>Compliance with Laws</u>. The parties shall comply with all laws and regulations applicable in the context of this Agreement.

11.15 <u>Export Controls and Sanctions</u>. The parties shall comply with all applicable export controls and sanctions restrictions, including those provided for in the Export Administration Regulations ("EAR") (15 C.F.R. § 730 et seq.) and the Office of Foreign Assets Control ("OFAC") regulations (31 C.F.R. § 500 et seq.). Customer warrants that it is not listed nor owned by a person that is listed on the List of Specially Designated Nationals ("SDNs"), Bureau of Industry and Security Entity List ("BIS Entity List") or Denied Persons List ("DPL"), or otherwise a restricted party under U.S. export controls or sanctions laws. Customer shall not export, reexport, or transfer (in country) to, or use Vendor's Cloud Services for the benefit of, a restricted party or embargoed destination without authorization from the U.S. government. If Vendor has reason to believe Customer has committed a violation of export controls or sanctions, Vendor may immediately terminate this Agreement, notwithstanding the terms of the clause titled "Term and Termination".

11.16 <u>Entire Agreement</u>. The Agreement contains the entire agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior communications, representations, minutes, agreements, and/or undertakings, either verbal or written, between the parties regarding the said subject matter. Any modification of any of the terms and provisions of the Agreement must be in writing and signed by duly authorized representatives of the parties. Customer acknowledges that Vendor makes no representations regarding the availability of any specific future Services.

11.17 <u>Survival</u>. The clauses of this Agreement which are by their nature intended to survive the expiry termination of this Agreement shall survive the expiry or termination of this Agreement. Such provisions include, but are not limited to, the provisions on Confidentiality, Personal Data, Indemnification for Intellectual Property Right Infringement, Limitation of Liability and Compliance with Laws.

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