

# SOFTWARE AS A SERVICE AGREEMENT

This agreement governs the terms and conditions under which **OnQ Software Pty. Ltd.** ACN 143 983 788 ("**Provider**", "**us**", "**we**", "**our**") provides software-as-a-service to the party listed in the Key Terms ("**Customer**", "**you**", "**your**").

The first part of the agreement sets out the key terms ("**Key Terms**"), followed by the legal terms and conditions ("**Legal Terms**") on which we provide the services to you (together, the "**Agreement**").

## KEY TERMS

Item			
1.	Our Details	Name:	OnQ Software Pty. Ltd.
		ACN/ABN:	143 983 788
		Address:	6/405 High Street, Northcote, VIC 3070
		Contact Person:	Nick Gannoulis
		Email:	nick.g@onqsoft.com.au
2.	Your Details	As set out in your quote.	
3.	Platform	We provide the QLIMS – Laboratory Information Management System (" <b>Platform</b> "). The Platform allows users to effectively manage the flow of samples and associated data to support laboratory operations and enhance efficiency.	
4.	Services	We will provide you with the services set out in your Quote.	
5.	Commencement Date	The date your Quote is electronically signed by you.	
6.	Term	From the Commencement Date until the conclusion of any Minimum Commitment period, and renewing in accordance with your Quote, until terminated in accordance with clause 12. (" <b>Term</b> ").	
7.	Charges	The charges payable by you are set out in the Quote, and unless otherwise indicated all pricing displayed is exclusive of GST (" <b>Charges</b> ").	
8.	Method of Payment	Payment of the Charges will be made by you following receipt of the invoice. Payment details are provided in the invoice or in your Quote.	
9.	Payment Process	All invoices are due and payable within 14 days of being issued. Further details on payment terms and process are set out in the invoice.	
10.	Minimum Commitment	As set out in the Quote.	

# LEGAL TERMS AND CONDITIONS

The Provider and the Customer agree as follows.

## 1. Definitions and Interpretation

1.1 In this Agreement the following expressions have the following meanings, unless otherwise stated:

**"Agreement"** means these terms and conditions as amended by us from time to time, including the Key Terms, any Schedules, the Quote, and any other documents expressly incorporated;

**"Authorised User"** means those of your employees, agents and contractors who are authorised by you to use the Platform and Services;

**"Business Day"** means a day other than a weekend or public or bank holiday in Victoria, Australia;

**"Charges"** means the charges set out in the Quote or as published by us from time to time and includes any Minimum Commitment;

**"Commencement Date"** means the commencement date specified in the Key Terms, or if there is no date specified, the date that this Agreement is signed by the last of the parties to sign it;

**"Consultants"** means any employees, contractors, agents or consultants that we use to provide the Platform and/or perform the Services;

**"Customer Data"** has the meaning in clause 6.5;

**"Delivery Date"** means an estimated delivery date for the provision of a Service.

**"Developed IP"** is defined in clause 6.3;

**"Intellectual Property Rights"** means all present and future intellectual and industrial property rights throughout the world of whatever nature (whether or not registered or registrable) including but not limited to all rights in respect of technical information, know-how, copyright, trade marks, designs, patents, domain names, business names, logos, drawings, trade secrets, the right to have confidential information kept confidential or other proprietary rights, or any rights to registration of such rights;

**"Minimum Commitment"** means the minimum Charges due under this Agreement as defined in the Quote;

**"Platform"** means the Platform we provide under this Agreement as defined in the Key Terms and which includes any associated Platform, technology, code and all Intellectual Property Rights contained therein;

**"Privacy Laws"** means the *Privacy Act 1988* (Cth) and the General Data Protection Regulation (EU 2016/679) (as applicable);

**"Provider IP"** is defined in clause 6.2;

**"Quote"** means the document incorporated into, and provided to you in conjunction with, these terms and conditions, outlining the scope of services to be provided, the Charges payable and other key terms of this Agreement;

**"Related Bodies Corporate"** has the meaning given in the *Corporations Act 2001* (Cth);

**"Services"** means the services that we provide to you under this Agreement, including associated deliverables, as set out in your Quote; and

**"Term"** means the term of this Agreement as defined in the Key Terms.

## 2. Use of the Platform

2.1 You will not, and you will ensure the Authorised Users will not:

- (a) modify the Platform or merge any aspect of the Platform with another programme other than as expressly provided under this Agreement (this clause does not apply to the use of

integration APIs expressly authorised by us or provided by us in the performance of the Services);

- (b) record, reverse engineer, copy, duplicate, reproduce, create derivative works from, frame, download, display, transmit or distribute any of the Platform, the source code of the Platform or any documents, manuals or setup instructions provided with the Platform or in relation to the Services;
- (c) licence, sell, rent, lease, transfer, assign or otherwise commercially exploit the Platform or the Services;
- (d) engage in unlawful behaviour, including unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;
- (e) access, store, distribute or transmit:
  - (i) viruses, worm, trojan or other malicious code that corrupts, degrades or disrupts the operation of the Platform;
  - (ii) material that is unlawful, unethical, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or a contravention of the rights of any third party;
  - (iii) material that facilitates illegal activity; or
  - (iv) material that abuses or causes damage or injury to any person or property;
- (f) provide Platform login details or passwords, or otherwise provide access to the Platform, to any unauthorised third party and you will take all reasonable steps to prevent unauthorised access to, or use of, the Platform;
- (g) share any features of the Platform that are not publicly available with any unauthorised third party; and
- (h) engage in any conduct on the Platform that is in breach of this Agreement (or any agreements mentioned therein).

2.2 All rights granted to you under this Agreement are personal, and these rights must not be leased, assigned, sold, licensed, resold or transferred to any third party in any manner whatsoever. You must not in any way encumber or allow the creation of any mortgage, charge, lien or other security interest in respect of the Platform.

2.3 Any breach of this clause 2 constitutes a breach of this Agreement and we may, at our absolute discretion, terminate or suspend your access to, and/or use of, the Platform or the Services, and/or take further actions against you for breach of this Agreement.

### **3. Services**

3.1 We will perform the Services in return for payment of the applicable Charges.

3.2 All Services will be provided based on the information and specifications supplied by you. All information that we provide is supplied in good faith, but we do not warrant or guarantee the accuracy or completeness of any information provided by us or any third party. It is not within the scope of our obligations to enquire as to, or to verify, the accuracy or completeness of information that we receive from you or any third parties.

3.3 We are not obliged to provide any Services under this Agreement that are not described in this Agreement.

3.4 We will use reasonable endeavours to provide the Services promptly or by any applicable Delivery Date or such other dates as agreed by the parties in writing. Any Delivery Date or time quoted for delivery, commencement or completion of any part of the Services is an estimate only and time will not be of the essence.

3.5 We may engage Consultants to perform our obligations under this Agreement at our sole

discretion.

### **3.6 Maintenance and Support**

- (a) We will provide maintenance support as described in our service level agreement(s), as provided to you and updated from time to time.
- (b) We will use reasonable commercial efforts to minimise disruption to your activities.
- (c) Error resolution will commence as soon as we have logged the error reported by you and taken steps to correcting or providing a sufficient work around to the error.
- (d) We are not liable to provide maintenance and support for errors that you do not report to the contact point.

## **4. Your obligations**

- 4.1 You acknowledge that our ability to be able to provide the Platform and the Services to you without delay or interruption is dependent on your full and timely cooperation. You will (and will ensure that the Authorised Users will):
  - (e) co-operate with and assist us in the supply of the Platform and the Services;
  - (f) ensure that your hardware and infrastructure meet, and continue to meet, all minimum technical requirements as communicated by us to you from time to time;
  - (g) promptly provide us with full and accurate information, data and explanations as and when required;
  - (h) promptly report errors to the contact point as soon as you become aware of them;
  - (i) comply with all applicable laws, regulations and industry standards with respect to your activities and obligations under this Agreement;
  - (j) ensure that your network and systems comply with the relevant specifications and guidelines provided by us from time to time; and
  - (k) comply with all reasonable directions and guidelines from us as advised from time to time.
- 4.2 You must procure all necessary rights from third parties, which are from time to time required in order for us to be able to provide the Platform or the Services to you.
- 4.3 It is your responsibility to ensure that the Key Terms, invoice or any other written communications we send to you set out the correct information in relation to your business and that you notify us of any changes to this information during the Term.

## **5. Charges and Payment**

- 5.1 You will pay us the Charges to access and use the Platform and the Services in accordance with this Agreement.
- 5.2 The Charges are exclusive of GST, VAT or other local Country Taxes and, are payable in the currency specified in your Quote.
- 5.3 If payment of the Charges is not received by any due date either described in the Key Terms or on a tax invoice provided to you, we will be entitled (without prejudice to any other right or remedy available to us under this Agreement or at law) to:
  - (a) withhold provision of the Services, or suspend your access to any or all of the Platform of the Services, until payment of the outstanding invoice (including interest) is received by us in full;
  - (a) charge interest on the outstanding amount at the rate of seven per cent (7%) per month, compounding monthly;
  - (b) demand immediate payment of all Charges, including interest, and all reasonable fees incurred in recovering the Charges, including legal expenses and debt collection fees;

(c) terminate this Agreement pursuant to clause 12.

- 5.4 You will make all payments for the Charges without any deduction for tax unless a tax deduction is required by law. If you are required to make a tax deduction by law, the amount due will be increased to the amount that (after making the tax deduction) upon deduction of the amount attributable to tax equals the amount which would have been due if no tax deduction had been required.
- 5.5 Charges are increased annually in line with the consumer price index (CPI), and otherwise in our discretion. We may, at any time during the Term, increase the Charges by providing you with 30 days' prior written notice. If you do not agree to these changes, you may terminate the Agreement by giving us 30 days' written notice no later than 30 days after the date you received written notice of the changes.

## 6. Intellectual Property

- 6.1 Subject to clauses 6.2 and 6.3, we grant you a personal, non-exclusive, non-transferable and revocable license to permit the Authorised Users to access and use the Platform and the Services (including the Intellectual Property Rights contained therein) throughout the world during the Term.
- 6.2 All rights, title or interest in and to the Platform and any information or technology that may be provided to, or accessed by, you in connection with your use of the Platform or Services is owned, and will remain owned, by us or our licensors ("**Provider IP**"). Using the Platform or the Services does not transfer any ownership or rights, title or interest in and to the Provider IP.
- 6.3 All Intellectual Property Rights discovered, developed or otherwise coming into existence as a result of, for the purposes of, or in connection with, the Platform or the provision of any Services will automatically vest in, and are assigned to, us, including any enhancements, improvements and modifications to the Provider IP (collectively, the "**Developed IP**").
- 6.4 You must not represent to anyone or in any manner whatsoever that you are the proprietor of the Platform and/or the Provider IP.
- 6.5 You retain full ownership rights to data and content that you provide to us, whether by uploading to the Platform or otherwise ("**Customer Data**"). Customer Data expressly includes workflows and any data in your systems prior to, and during, the performance of the Services. This includes, for example, formulations, testing information, and calculations using data owned or accessed by you. You grant us a worldwide, perpetual, irrevocable, non-exclusive and royalty free license to access and use the Customer Data for the purpose of performing our obligations under this Agreement.
- 6.6 You agree that we may refer to your logo, trade mark, and your business name, in any communications or publications for the purposes of marketing or promoting our business.
- 6.7 You agree that we may make reference to you as a customer of ours, including references provided by you, with your prior written consent.

## 7. Warranties

- 7.1 We will use reasonable endeavours to provide constant, uninterrupted access to the Platform and the Services, but with any Platform based product, this cannot be guaranteed. We will not be responsible or liable for any direct or indirect losses or damages suffered or sustained by you as a result of, or in connection with, any interruption or delay in accessing and using the Platform or the Services. Based upon AWS Uptime of less than 99.9% but greater than or equal to 99.0%
- 7.2 We will investigate all problems or errors in any Services, provided that, following delivery of the Services, you provide us prompt notice as required under our service level agreements, and you give us all necessary information to conduct an investigation into the matter.

- 7.3 To the maximum extent permitted by law, no further warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of the Platform provided hereunder is given or assumed by us other than as required at law.
- 7.4 Beyond the service level guarantees contained in our service level agreement, you acknowledge and agree that the Platform and the Services are provided on 'as is' basis and that you will make your own investigations into whether or not the Platform and the Services are fit for your purposes.
- 7.5 We employ best-practices but do not make any representations, warranties or guarantees:
- (a) that content available on, or produced by or via, the Platform is accurate, complete, reliable, current, error-free or suitable for any particular purpose. This content is provided on an 'as is' basis and you acknowledge and agree that you exercise absolute discretion in choosing how to use this content; or
  - (b) as to the availability of the Platform or that the Platform and/or the Services are or will be free from viruses, worm, trojan or other malicious code. We will use appropriate tools and precautions to keep the Platform and Services free from vulnerabilities. However, you are responsible for taking your own precautions in this respect.

## 8. Liability and Exclusions

- 8.1 Our total liability to you or any third party (whether based on warranty, contract, tort, statute, misrepresentation or otherwise) arising out of, or in connection with, this Agreement, for any one event or a series of related events, will be limited to the total Charges paid (excluding GST and expenses) by you to access and use the Platform and the Services (as applicable) in the 12 months immediately prior to the event(s).
- 8.2 You assume sole responsibility for your use of the Platform and the Services (including any content contained therein) and for any reliance on, and use of, conclusions drawn from such use.
- 8.3 We will have no liability for any losses suffered or any damage caused by errors or omissions in any information or instructions provided to us by you in connection with the Platform, the Services or any actions taken by us at your direction.
- 8.4 In no event will we be liable to you or any third party for any:
- (a) loss of profits, revenue, goodwill or business, business interruption, corruption, loss or alteration of data, downtime costs, loss of use, failure to realise anticipated savings or for any indirect or consequential loss or damage of whatsoever nature, however caused;
  - (a) breach by you, any Authorised User or any third party of the Intellectual Property Rights of a third party or any laws, regulations or any relevant industry codes;
  - (b) viruses, worm, trojan or other malicious code introduced into, or transmitted to, you or any third party during the course of using the Platform or the Services; or
  - (c) loss of or damage to any property belonging to you, any Authorised User or any third party or any personal injury or death arising out of or in connection with this Agreement.
- 8.5 The parties acknowledge that the limitations of liability contained in this clause 8 are a fair and reasonable allocation of the commercial risk between the parties.

## 9. Indemnity

You agree to indemnify and hold us, our Related Bodies Corporate and our officers, directors, employees and contractors (collectively, the "**Indemnified**") harmless from and against any and all claims, actions, demands, proceedings, liabilities, losses, damages, expenses and costs that may be brought against the Indemnified or which the Indemnified must pay, sustain or incur as a direct or indirect result of or arising out of:



- (a) breach by you or any Authorised User of any of your obligations under the Agreement;
- (b) loss of, or damage to, any property belonging to you, any Authorised User or any third party or any personal injury or death arising out of or in connection with this Agreement;
- (c) breach of any third party's Intellectual Property Rights; or
- (d) breach by you or any Authorised User of any law (including Privacy Laws).

## **10. Confidentiality**

- 10.1 Each party agrees not to use or disclose confidential information received or disclosed to it by the other party in the negotiation or operation of this Agreement, save for such use or disclosure necessary and required to perform their respective obligations under this Agreement. Disclosure will be, in any event, only made to the receiving party's employees, officers, agents or contractors to whom it is necessary to do so and who are directly involved in performing the receiving party's obligations.
- 10.2 In making disclosure to persons as permitted under this clause 10, the receiving party will ensure that persons receiving the disclosing party's confidential information will comply with the same obligations regarding confidentiality as that of the receiving party.
- 10.3 Information is not to be regarded as confidential, and the receiving party will have no obligation regarding confidentiality, where that information is already in the public domain or enters the public domain through no fault of the receiving party, is received from a third party without any obligations of confidentiality, is used or disclosed with the prior written consent of the disclosing party, is disclosed in compliance with a legal requirement or is independently developed by the receiving party.
- 10.4 Any confidential information held by a receiving party will be returned to the disclosing party or destroyed at the written request of the disclosing party.

## **11. Privacy**

You must, in connection with this Agreement:

- (a) ensure that you and your employees, contractors and agents are aware of your obligations under all applicable Privacy Laws;
- (b) at all times comply with your obligations under applicable Privacy Laws; and
- (c) take reasonable steps to assist us to comply with our obligations under applicable Privacy Laws as may be notified to you from time to time.

## **12. Term and Termination**

- 12.1 This Agreement will commence on the Commencement Date and will continue in force for the Term specified in the Key Terms unless terminated in accordance with this clause 12.
- 12.2 Subject to any Minimum Commitment, either party may terminate this Agreement by providing a minimum of 60 days notice prior to the end of the Term, or any subsequent billing period following the initial Term. The Agreement will be terminated upon the completion of that Term or subsequent billing period.
- 12.3 We may terminate this Agreement (or at our discretion, the supply to you of the Platform or the Services) immediately if you fail to pay any invoice and such sum remains unpaid for thirty (30) days.
- 12.4 Either party may terminate this Agreement immediately by giving written notice to the other party if:
  - (a) the other party is in breach of this Agreement to a material extent and fails to remedy the breach within fourteen (14) days of being notified of the breach (if it is capable of being remedied); or

- (a) the other party is bankrupt, in a voluntary arrangement, in liquidation or receivership or has ceased business or threatened to cease business or is otherwise insolvent.
- 12.5 On termination of this Agreement for any reason, we will be entitled to immediate payment for all Charges properly incurred up to the date of termination and during any applicable notice period, including any Minimum Commitment.
- 12.6 Any prepaid Charges will not be refunded, however you will continue to have access to the Platform until the end of the Term of billing period for which you have prepaid Charges.
- 12.7 On the termination or expiry of this Agreement, or upon the termination of the access period for which you have prepaid Charges (whichever is later), you will return all of our confidential information, Provider IP, Developed IP and any other property belonging to us in your possession, control or custody.
- 12.8 Within 1 calendar month of termination or expiry of this Agreement, or upon the termination of the access period for which you have prepaid Charges (whichever is later), you may request a final backup of your data from us. We will provide you the backup of the data within a reasonable timeframe following your request, at no additional charge to you.
- 12.9 The following clauses survive termination of this Agreement: clauses 1, 5.3, 6, 7, 8, 9, 10, 12, 16, 17.

### 13. Non-Solicitation

You will not attempt to employ, either directly or indirectly or as consultants, any of our Consultants during the term of this Agreement without our prior written consent. If you are in breach of this clause, we will be entitled to terminate this Agreement for serious breach, in accordance with clause 12.

### 14. Situations or events outside our reasonable control

There are certain situations or events that may occur which will not be within our reasonable control. Where this occurs, we will notify you of these circumstances and attempt to recommence providing the Platform and/or the Services (as applicable) as soon as we are able. In such circumstances there may be a delay (sometimes a substantial delay) before we can start or continue performing the Platform and/or the Services.

### 15. Notices

- 15.1 Any notice required to be given pursuant to this Agreement will, unless otherwise stated, be in writing and be sent to the other party at the email address specified in this Agreement (or to such other address as either party may from time to time notify the other in accordance with this clause). Based on the next business day.
- 15.2 A notice given under clause 15.1 will be deemed to have been delivered 24 hours after the email is sent. Based upon the next business day.

### 16. Dispute Resolution

- 16.1 If a dispute arises in relation to this Agreement, a party ("**Provider**") may give the other party ("**Recipient**") a written notice adequately identifying the matters in dispute ("**Dispute Notice**").
- 16.2 Within 10 days of the Provider giving a Dispute Notice, the parties must meet informally and attempt to resolve the dispute. If a resolution is not achieved within 10 days from the informal meeting, the Provider may give the Recipient written notice requiring the dispute to be referred to mediation ("**Mediation Notice**").
- 16.3 If a Mediation Notice is given, the parties will appoint a mediator in writing, or if the parties cannot agree on a mediator within 7 days of the Mediation Notice being served, a mediator will be appointed by the Chair of Resolution Institute or the Chair's designated representative. The



parties or their nominated representatives must attend any arranged mediation to attempt to resolve the dispute and unless otherwise agreed by the parties, the Resolution Institute Mediation Rules will apply to the mediation.

- 16.4 The costs of mediation will be shared equally by the parties unless otherwise agreed in writing.
- 16.5 If the dispute identified in the Mediation Notice is not resolved within 14 days of appointment of the mediator, either party may seek mediation again pursuant to this clause, with the parties agreeing that the mediator will make a binding resolution.
- 16.6 No party may commence litigation unless they have first complied with this clause, except where the party is seeking urgent interlocutory relief.
- 16.7 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

## **17. General**

- 17.1 Variations to this Agreement will only be effective if in writing and signed by authorised representatives of both parties.
- 17.2 The provisions of this Agreement that are capable of having effect after the termination or expiry of this Agreement will remain in full force and effect following the termination or expiry of this Agreement.
- 17.3 You must not, without our prior written consent (which will not be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement.
- 17.4 If either party chooses to waive or ignore a breach of the Agreement, this will not prevent that party from taking action in respect of the same type of breach at a future date.
- 17.5 Nothing in this Agreement is intended to create or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither we nor you will have, nor represent that it has, any authority to make any commitments of this kind on the other party's behalf.
- 17.6 This Agreement, and the relationship between the parties contemplated by it, is not intended to be exclusive.
- 17.7 If any provision of this Agreement is held invalid or unenforceable, such provision will be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible achieves the parties' intent in agreeing to the original provision. The remaining provisions of this Agreement will continue in full force and effect.
- 17.8 This Agreement is governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.
- 17.9 This Agreement may be executed electronically, any of which may be signed using e-signing software, and in any number of counterparts. Upon electronic signing of the Quote the entire Agreement is executed, and the Agreement will become binding as and from the Commencement Date.
- 17.10 This Agreement constitutes the entire agreement between the parties in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings. The parties confirm that they have not relied on any representation that is not expressly incorporated into this Agreement.

## **SIGNING**

**Digitally Executed as an Agreement**