

## EMEA Services Agreement

This EMEA Services Agreement (the “**Agreement**”) is made between You, the customer (“**Customer**” or “**You**”) and Quest as defined below. Quest, through its employees, agents and contractors, shall perform the consulting and/or training services described in the Services Order Form, Quest Quotation or Statement of Work (each a Services Order and referred to herein as an “**SO**”) into which this Agreement is incorporated. If You are purchasing the Activities (as defined below) in connection with Your internal business operations, You will be considered both Customer and End Customer (as defined below) under this Agreement. If You are purchasing the Activities as a service provider to one of Your customers or to resell to one of Your customers, You will be considered the Customer and Your customer will be considered the End Customer under this Agreement.

### 1. Definitions.

- (a) “**Quest**” means (i) *Quest Software GmbH* with its registered office at Im Mediapark 4e, 50670 Cologne, Germany, if You purchased Activities in Germany; or (ii) *Quest Software (UK) Ltd*, with its registered office at Ascot House, Maidenhead Office Park, Westacott Way, Littlewick Green, Maidenhead, Berks SL6 3QQ, United Kingdom, if You purchased Activities in the UK; or (iii) *Quest Software International Ltd*, with its registered office at Unit 5, Bluebell Business Park, Old Naas Road, Dublin 12, Ireland, if You purchased the Activities in any other country within Europe, Middle East or Africa.
- (b) “**Affiliate**” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.
- (c) “**Activities**” are consulting and/or training services to be performed by Quest on a “time and materials” basis (i.e., billed by the hour or Day).
- (d) A “**Description of Services**” or “**Services Offering Description**” is a document incorporated into or referenced in an SO which contains a description of the planned Activities for the SO (each referred to herein as a “**DOS**”).
- (e) A “**Day**” is seven and half (7.5) hours.
- (f) “**Documentation**” means the user manuals and documentation that Quest delivers with the Products.
- (g) “**End Customer**” means the entity identified as the “End User” or “End Customer” on the SO.
- (h) An “**Engagement**” is a set of consecutive Workdays during which Quest shall perform Activities at End Customer’s site.
- (i) A “**Workday**” is a calendar day during which Quest performs Activities.
- (j) “**Hardware**” means any hardware identified in the SO purchased by Customer from Quest under a separate agreement.
- (k) “**Prepaid**” means the Time for which Customer is invoiced immediately following the full execution of an SO.
- (l) “**Products**” means the Software and/or Hardware identified in an SO or DOS and licensed or purchased by Customer under a separate agreement.
- (m) “**Software**” means Quest’s proprietary software products identified in an SO or DOS and licensed by Customer under a separate agreement.
- (n) “**Time**” is the quantity of Days or hours stated in an SO.

### 2. Process.

- (a) **Purchase Orders.** Except as otherwise stated in the SO, Quest shall process each SO upon receipt of an executed SO and/or Customer’s purchase order (“**PO**”) for the Activities and the estimated travel and living expenses, if any, each as stated in the fees table of the SO. The estimated travel and living expenses stated in the SO, if any, shall be included as a separate line item on the PO.
- (b) **Resource Assignment.** The project team shall be assigned following Quest’s receipt of the SO executed by Customer and/or Customer’s PO. The Activities shall start upon mutual agreement of the parties. Customer agrees that Quest may use certified channel partners or certified subcontractor consultants to perform Activities; however, Quest shall be liable to Customer for the acts and omissions of any such channel partner or subcontractor while such channel partner or subcontractor is performing Activities under the SO. With Customer’s approval, Quest may also send a consultant-in-training, free of charge, for observation or training purposes.
- (c) **Rescheduling.** Unless stated otherwise in the SO, if an Engagement is canceled or rescheduled less than ten (10) days before it is scheduled to begin, Customer shall pay Quest a cancellation fee equal to three (3) Days of Activities or forfeit three (3) Prepaid Days of Activities (as applicable) and reimburse Quest for any non-refundable travel expenses Quest incurs as a result of the cancellation or rescheduling. Customer agrees that, except for factors beyond its reasonable control or if the Activities planned for an Engagement have been completed, it shall not cancel an Engagement. If an Engagement is canceled once it has begun, for reasons other than those stated in the preceding sentence, Customer shall pay Quest for the remaining Time in the Engagement or, if applicable, forfeit the applicable Prepaid Time.
- (d) **Assumptions and Customer Obligations.** Customer shall sign or (where applicable) shall require the End Customer to sign weekly Time and Activity reports to confirm the performance of the Activities and, if training classes are being provided under the SO, sign the course evaluation forms prior to the departure of the on-site trainer. If the weekly Time and Activity reports are not signed within five (5) days of their delivery or the Customer has not submitted a written request for adjustment, they shall be considered to be correct and accepted by Customer. In addition, Customer shall provide or (where applicable) shall ensure that the End Customer:
  - Commits a technical resource, as may be required, to provide Quest with the assistance required to perform the Activities.
  - Provides Quest consultants with adequate and appropriate accommodations at the site, as well as access to servers, systems and data, as may be required, to perform the Activities.
  - Provides project team members with suitable business expertise, technical expertise and decision-making authority to ensure efficient project progress.
  - On request, provides the Quest project manager with applicable documentation of current business practices applicable to the Activities to be performed under the SO.

**3. Time.** Quest does not represent that the planned Activities shall be completed within the Time stated on the SO. Quest shall promptly notify Customer if it determines that more Time shall be required to complete the planned Activities and shall not perform Activities beyond the Time without an executed amendment to the SO. Following Customer’s email or equivalent approval, Quest may reallocate the Time stated in the SO among the various resources stated in the fees table of the SO, provided such reallocation does not exceed the Estimated Total Fees set forth therein. Activities shall use Prepaid Time, if any, before non-Prepaid Time.

#### 4. Fees.

(a) **Payment.** Quest will invoice Customer in arrears at the rate stated in the SO for the Activities performed. If any line items in the SO indicate "Prepaid", then such line items will be invoiced upon execution of the SO. Unless stated otherwise in the SO, payment shall be made in full within thirty (30) days from the date of the applicable invoice. Any amounts payable by Customer that remain unpaid after the due date shall be subject to a late charge equal to one and one half percent (1.5%) of the invoice amount per month from the due date until such amount is paid, or the maximum rate permitted by law, if less. All applicable local taxes and travel and living expenses, if any, shall be billed as separate line items.

(b) **Expenses.** Unless the SO indicates that Travel Expenses are included in the rate or otherwise not chargeable, Customer agrees to reimburse Quest for the travel and living expenses reasonably incurred in the performance of each SO ("**Travel Expenses**"). Travel Expenses are estimated in the fees table and, unless stated otherwise in the SO, shall be subject to the following guidelines:

- Airline fares shall be economy class fares; however, whenever possible, Quest shall purchase discounted airfares.
- Car rental shall be a midsize car or smaller. Mileage reimbursement for personal cars used, if any, shall not exceed the current mileage reimbursement under applicable tax law.
- Lodging shall be in standard hotel rooms, unless otherwise agreed to by Customer. Quest shall seek competitive lodging rates and shall attempt to take advantage of any special discounts, which may be negotiated by Customer at local hotels.
- Meals for Activities, including travel days, shall be billed at standard rates or current meal reimbursement under applicable tax law per day; no receipts for meals shall be provided.

No Travel Expenses shall be charged for Time designated as "Remote" in the SO.

(c) **Dates Valid.** The Unit Price in the SO is valid for Activities performed within one (1) year of the date of Customer's execution of the SO. Any Prepaid Days unused after twelve (12) months from the date of the execution of the SO or following termination of the SO pursuant to Section 10 shall expire without the right of refund.

(d) **Normal Business Hours, Weekends, and Holidays.** Unless otherwise agreed by the parties, Activities shall be performed Monday through Friday 09:00 to 17:30 local time ("**Normal Business Hours**"), excluding weekends and bank holidays. If Activities are performed outside of Normal Business Hours, 1.5 hours will be used for each hour so performed on weekdays from the hours of 17:30 to 22:00, this increasing to 2 hours per hour performed on weekdays from the hours of 22:00 to 09:00 and on weekends and on bank and public holidays. Quest will only perform Activities after Normal Business Hours if authorized to do so by Customer in writing.

**5. Intellectual Property.** During the performance of the Activities by Quest, Quest may create certain intellectual property, including, without limitation, ideas, know-how, techniques, documentation, and software scripts (collectively, the "**IP**"). All IP shall be the sole and exclusive property of Quest. Quest retains title and full ownership rights to all such IP under the copyright laws of the United States, Canada or any other jurisdiction or under any federal, state, or foreign laws. Upon Quest's receipt of payment for the Activities, the End Customer shall be granted a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable, non-sublicensable license to use the IP for its internal business purposes. Notwithstanding the foregoing, nothing contained in this clause shall grant Quest any ownership rights to Customer's Confidential Information.

#### 6. Warranty.

(a) **Performance.** Quest warrants that the Activities shall be performed in a workmanlike manner and with professional diligence and skill. As Customer's exclusive remedy and Quest's sole obligation for any and all breaches of the foregoing warranty, Quest shall, at its option and expense, either re-perform any nonconforming Activities reported to Quest, in writing, by Customer within thirty (30) days of the performance of the Activities or refund the fees paid for such nonconforming Activities. For the purposes of this Section, a "workmanlike manner" means that the Activities have been performed accurately and in a manner which is consistent with the applicable Documentation.

(b) **Right to Perform.** Quest warrants that it has (i) all necessary licenses and permits required to perform the Activities, (ii) the right to use and provide the IP used during the performance of the Activities, and (iii) the right to convey any licenses granted hereunder. Customer's sole and exclusive remedy, and Quest's entire liability for any breach of the warranty in the preceding sentence, shall be for Quest to perform its obligations under Section *INFRINGEMENT*.

THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY QUEST HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE.

**7. Nondisclosure.** "**Confidential Information**" means information or materials disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential. Confidential Information includes, without limitation, this Agreement, the Software, personal data, source code, object code, information regarding the functionality and performance of the Software, benchmark test results regarding the Software, Software license keys, trade secrets, financial information, marketing information, customer information, know-how, proprietary tools, proprietary knowledge or proprietary methodologies, and any End Customer information expressly marked as confidential.

Confidential Information shall not include information or materials that (a) were, on the effective date of this Agreement, generally known to the public; (b) become generally known to the public after the effective date of this Agreement other than as a result of the act or omission of the Receiving Party; (c) were known to the Receiving Party without an obligation of confidentiality prior to that party receiving the same from the Disclosing Party; (d) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (e) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information. Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Confidential Information, as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party, unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

The Receiving Party shall not (a) make Confidential Information available to any Affiliates, directors, officers, employees, consultants or representatives (collectively, the "**Representatives**") who do not have a "need to know" in order to carry out the purposes of this Agreement; (b) otherwise disclose any Confidential Information to any third party without the written consent of the Disclosing Party; or (c) use Confidential Information for any purpose other than as contemplated by this Agreement. The Receiving Party shall inform its Representatives of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and

use, as set forth in this Section, and shall disclose Confidential Information only to its Representatives who are legally bound to protect the Confidential Information under terms at least as restrictive as those provided herein. The Receiving Party agrees to protect Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall be liable for any disclosure or other breach in violation of this Agreement by any of its Representatives. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Confidential Information and shall cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights.

If You are the Customer but not the End Customer, You shall be permitted to provide to the End Customer Confidential Information of Quest for the purposes only of the SO and You agree that, prior to Quest providing Activities to the End Customer under an SO, (i) You shall ensure that a nondisclosure or confidentiality agreement on terms no less onerous than those contained in this section *Nondisclosure* shall be in effect with the End Customer and in any event (ii) You agree to be jointly and severally liable for any acts or omissions by the End Customer with respect to Quest's Confidential Information that, if done or not done by You would be a breach of this Section *NONDISCLOSURE*.

**8. Limitation of Liability.** EXCEPT FOR (A) AMOUNTS CONTAINED IN FINAL JUDGMENTS OR SETTLEMENTS WHICH EITHER PARTY IS LIABLE TO PAY ON BEHALF OF THE OTHER UNDER THE *INGRINGEMENT* SECTION, (B) EITHER PARTY'S BREACH OF THE *NONDISCLOSURE* SECTION, (C) CUSTOMER'S BREACHES OF THE *INTELLECTUAL PROPERTY* SECTION, AND (D) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, IN NO EVENT SHALL EITHER PARTY OR THEIR AFFILIATES, SUBCONTRACTORS, OR ANY OF THE LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES OF ANY OF THE FOREGOING BE LIABLE TO THE OTHER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE), WHETHER FORESEEABLE OR UNFORESEEABLE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF QUEST OR A QUEST REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

EXCEPT FOR (A) EITHER PARTY'S OBLIGATIONS UNDER THE *THIRD PARTY CLAIMS* SECTION, (B) EITHER PARTY'S BREACHES OF THE *NONDISCLOSURE* SECTION, (C) CUSTOMER'S BREACHES OF THE *INTELLECTUAL PROPERTY* OR *FEES* SECTIONS, AND (D) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, EITHER PARTY'S CUMULATIVE LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, SHALL BE LIMITED TO NO GREATER THAN 125% OF THE ESTIMATED TOTAL FEES SET FORTH ON THE SO OR OTHERWISE PAID FOR THE ACTIVITIES DESCRIBED ON THE SO.

LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, SHALL INCLUDE BUT NOT BE LIMITED TO (I) DAMAGE CAUSED WITH INTENT OR BY GROSS NEGLIGENCE, (II) DEATH, PHYSICAL INJURY OR HARM TO HEALTH, (III) MANDATORY STATUTORY LIABILITY UNDER LOCAL PRODUCT LIABILITY LEGISLATION, AND (IV) IN GERMANY ONLY, AND ONLY UP TO THE AMOUNT OF THE TYPICALLY FORESEEABLE DAMAGE, ANY DAMAGE CAUSED BY THE SIMPLE NEGLIGENT BREACH OF A "MATERIAL CONTRACTUAL DUTY" THAT PREJUDICES THE ACHIEVEMENT OF THE PURPOSE OF THIS AGREEMENT.

## **9. Infringement.**

Quest shall, at its own expense, defend or settle any claim, suit, action, or proceeding brought against Customer by a third party to the extent it is based on an allegation that any IP provided hereunder directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which the IP is delivered to Customer, or misappropriates a trade secret in such country (an "**IP Claim**"). Additionally, Quest shall pay any judgments finally awarded against Customer under an IP Claim or any amounts assessed against Customer in any settlements of an IP Claim, and reasonable administrative costs or expenses, including, without limitation, reasonable attorneys' fees necessarily incurred by Customer in responding to the IP Claim. Quest's obligations under this Section *INFRINGEMENT* are conditioned upon Customer (i) giving prompt written notice of the IP Claim to Quest; (ii) permitting Quest to retain sole control of the investigation, defense or settlement of the IP Claim, and (iii) providing Quest with such cooperation and assistance, as Quest may reasonably request, from time to time, in connection with the investigation, defense or settlement of the IP Claim.

Quest shall have no obligation hereunder to defend Customer against any IP Claim (i) resulting from use of the IP other than as authorized in this Agreement, (ii) resulting from a modification of the IP other than by Quest, (iii) based on use of the IP after Quest recommends discontinuation because of possible or actual infringement, (iv) based on use of a superseded or altered release of IP, if the infringement would have been avoided by use of a current or unaltered release of the IP made available by Quest, or (v) to the extent the IP Claim arises from, or is based on, the use of the IP with other products, services, or data not supplied by Quest, if the infringement would not have occurred but for such use. If Customer's use of the IP is enjoined as a result of an IP Claim, Quest shall, at its expense and option either (i) obtain the right for the continued use of the IP, (ii) replace the IP with a functionally equivalent non-infringing product, (iii) modify the IP so that it is non-infringing, or (iv) accept the return of the infringing IP and refund the fee paid for the infringing IP, pro-rated over a sixty (60) month period from the date of delivery of the IP. This Section states the entire liability of Quest, and Customer's sole and exclusive remedy, with respect to an IP Claim.

## **10. Term and Termination.**

This Agreement and the SO may be terminated (a) by mutual agreement of Quest and Customer, (b) by either party, if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof from the non-defaulting party; (c) by Quest if Customer (i) is adjudged bankrupt; (ii) a court assumes jurisdiction of the assets of Customer, (iii) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of Customer, (iv) Customer becomes insolvent, suspends business or ceases to conduct its business in the ordinary course, or (v) Customer makes an assignment of its assets for the benefit of its creditors; or (d) by either party for any reason upon thirty (30) days written notice.

Upon termination of this Agreement and the SO hereunder, Customer shall pay Quest for all Activities performed and reimbursable expenses incurred up to the effective date of the termination. Within fifteen (15) days after termination of this Agreement, each party shall certify, in writing, to the other party that all Confidential Information of the other party, received in connection with this Agreement, has been destroyed or returned. The Sections titled *DEFINITIONS*, *INTELLECTUAL PROPERTY*, *WARRANTY*, *NONDISCLOSURE*, *LIMITATION OF LIABILITY*, *INFRINGEMENT*, *FEES* and *GENERAL* shall survive the termination of this Agreement.

**11. Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in a SO or in writing by either of the parties to the other in accordance with this Section. Except as may otherwise be expressly permitted herein, notices shall be delivered personally, sent via a nationally recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid. All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail.

**12. Assignment.** Customer shall not assign this Agreement (by operation of law or otherwise) without prior written consent of Quest and any purported attempt to do so shall be null and void.

**13. Hiring of Employees.** During the term of the SO, and for a period of six (6) months thereafter, neither party shall solicit for employment any employees of the other party or its Affiliates who directly participated in the work being performed under the SO. For this purpose, "solicitation" does not include contact resulting from indirect means, such as public advertisement, placement firm searches or similar means not directed specifically at the employee to which the employee responds on his or her own initiative, nor shall it include contacts initiated by the employee.

**14. Insurance.** Quest shall maintain insurance coverage during the term of this Agreement as may be required by applicable law and which it reasonably deems to be adequate to cover its obligations and liabilities under this Agreement.

#### **15. General.**

(a) If You purchased the Activities in Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Norway, Spain, Sweden or Switzerland, then the laws of such country apply in relation to any issue, claim or dispute arising from this Agreement. If You purchased the Activities in any other country in Europe, the Middle East or Africa then the laws of England and Wales apply. Any conflict of laws principles that would require the application of laws of a different country are excluded. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, regardless of the countries in which the parties do business or are incorporated. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the courts of the country whose laws apply to this Agreement. Each party hereby agrees to submit to the exclusive jurisdiction of such courts.

(b) If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision shall be enforced to the maximum extent permissible and the remaining provisions of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(c) Quest may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Quest in its marketing communications.

(d) Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion.

(e) Each party acknowledges and agrees that in the event of a material breach of this Agreement, including, but not limited to, a breach of the *INTELLECTUAL PROPERTY* or *NONDISCLOSURE* Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

(f) Each party shall be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. For the avoidance of doubt, an excuse of the obligation to pay fees due hereunder during the pendency of a force majeure event, shall not operate to relieve Customer of its contractual obligation to pay such fees owed under this Agreement.

(g) Customer hereby acknowledges and agrees that Quest's performance of this Agreement may require Quest to process or store personal data of Customer, its employees and Affiliates and to transmit such data internally within Quest or to Quest Affiliates. Such processing, storage, and transmission (i) shall only be for the sole purpose of, and only to the extent necessary for Quest to perform its obligations under this Agreement and (iii) may take place in any of the countries in which Quest and its Affiliates conduct business, including countries outside of the European Economic Area. Quest hereby affirms to Customer that Quest Software, Inc. currently abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data from the European Union.

(h) Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement shall not be construed either in favour of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement, it shall be construed in each case to mean "including, but not limited to."

(i) Quest shall, at its own expense, comply with all local laws, and statutes and regulations applicable to businesses which provide onsite consulting and training services for commercial software products.

(j) Each party is acting as an independent contractor under this Agreement and nothing contained herein shall be construed to create or imply any agency, joint venture, partnership, principal-agent or employment relationship between the parties. Neither party's employees, agents nor consultants shall be considered under any circumstances to be employees, agents or consultants of the other party. No term of this Agreement is intended to confer a benefit on or be enforceable by any person who is not a party to this Agreement.

This Agreement, the SO, and any properly executed addendum or exhibits (if any) thereto contains the entire agreement between the parties regarding the subject matter hereof and supersedes any and all other agreements and communications, written or oral, express or implied. Neither this Agreement nor the SO may be modified or amended except by a writing executed by a duly authorized representative of each party. The parties hereby acknowledge and agree that this Agreement or an SO may not be denied legal effect, validity, or enforceability solely because a certified electronic signature was used in its formation and waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature, to the extent permitted under applicable mandatory law. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or the SO. The terms of this Agreement shall control over any conflicting terms and conditions contained in the SO.