

QUEST SOFTWARE INC. PRODUCT GUIDE

This Product Guide states the usage rights and other terms associated with each Quest Product that you (“You” or “Customer” or “Licensee”) have purchased (the “Product Terms”). If You have an agreement with Quest that references the Licensing Guide, this Product Guide shall be deemed to be the Licensing Guide for that agreement.

The Product Guide is in three parts: License Types, Product Specific Terms, and Other Terms. While every Quest Product has a License Type, only some are subject to Product Specific Terms. Any capitalized terms within a License Type definition shall be as defined elsewhere in the Product Guide.

PART 1 - LICENSE TYPES	
Academic Department	An Academic Department is departmental organization within an institution of higher education (e.g., economics department, social sciences department).
Accelerated Connection	An Accelerated Connection is a connection between the Software and a firewall that is to be accelerated by the Software.
Access Device	An Access Device is a Device used to access applications and desktops published by vWorkspace. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Administrator	An Administrator is a person who uses the Software for an administrative function. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
Agent	An Agent is either (i) one Virtual CPU Socket or (ii) one Physical Server that is not running virtualization software, either of which is being managed by the Software.
APM Agent	An APM Agent is an item of Software deployed to monitor application transactions within an execution environment such as Java, .NET, or PHP.
Appliance	An Appliance is the computer on which the Software is delivered or on which the Software is used. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Application Installer	An Application Installer is a single installer (such as Microsoft Standard Installer) that is imported to or created by the Software.
Application Only User Acct	An Application Only User Account is a User Account to be authenticated by the Software. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.
Archive Mailbox	An Archive Mailbox is a mailbox that stores data moved by the Software to the archive environment.
ARS Enabled Accounts	ARS Enabled Accounts are the total number of unique enabled accounts in the domain(s) and cloud managed or configured using the Software, including but not limited to users' logon accounts, secondary accounts tied to users, administrative accounts, service principals, non-human accounts, service accounts, test accounts, person, user and inetOrgPerson objects. Enabled accounts includes all accounts that are active, functional, and available for use in authentication. The combined total of your ARS Enabled Accounts and ARS Disabled Accounts licenses must be at least the number of accounts managed or configured using the Software.

ARS Disabled Accounts	ARS Disabled Accounts are the total number of unique disabled accounts in the domain(s) and cloud managed or configured using the Software, including but not limited to users' logon accounts, secondary accounts tied to users, administrative accounts, service principals, non-human accounts, service accounts, test accounts, person, user and inetOrgPerson objects. Disabled accounts includes all accounts that are not active, non-functional, and not available for use in authentication. The combined total of your ARS Enabled Accounts and ARS Disabled Accounts licenses must be at least the number of accounts managed or configured using the Software.
Asset	An "Asset" is a Device that is not a computer and that is managed or monitored by the Software. For the purposes of this definition, a "Chromebook" is an Asset.
Asset Pack	An "Asset Pack" consists of 250 Assets.
Audited CPU	An Audited CPU is a CPU used by a database or an application that will be audited by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Azure SQL Database	An Azure SQL Database is an Azure SQL Database monitored by the Software.
Backend Data Capacity	Backend Data Capacity is the data capacity of the storage device on the Appliance on which the Software is delivered.
Boomi Connection	A Boomi Connection is an integration between a component of the Software and another database, application, or API.
Cached Account	A Cached Account is an account credential cached by the Software on one or more Virtual Appliance(s).
Concurrent Connection	A Concurrent Connection is a single Connection to Customer's concurrent license server, regardless of the number of client machines on which the Software is installed.
Concurrent Monitored Instance	A Concurrent Monitored Instance exists for the time during which a SQL Server Instance is being monitored by the Software.
Concurrent Session	A Concurrent Session is the time during which a user is using the Software to load a particular page in a web browser.
Concurrent User	A Concurrent User is a User with a Concurrent Connection.
Connected Client	A "Connected Client" is a computer or thin client that uses the Software to access or connect to a peripheral device, whether such peripheral device is connected directly to the computer, the thin client, or accessed remotely over a network. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Connected System Account	A Connected System Account is one (1) Active Directory Enabled User Account that is mapped to an account in a system connected to Active Directory (such as a user or a group). The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.
Connection	A Connection exists for the duration of a User's login to (or use of) the Software or Devices managed by the Software.
Connector	A Connector is software allowing one way, or bi-directional, alert / event synchronization between two designated third party management platforms / frameworks.
Core	A Core is an independent processing unit on a physical chip (that processes the main instructions on the computer) that can read and execute a set of processing instructions separately from other independent processing units on the same physical chip. The license quantity required for each device on which Software licensed by Core is installed must be the total number of Cores on each such device.

CPU	A CPU is a central processing unit that interprets computer program instructions and processes data. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
CPU Socket	A CPU Socket is a connector on a computer's motherboard that accepts a CPU and forms an electrical interface with it. Servers may contain one or more CPU Sockets. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Customer	A Customer is the legal entity which purchased the license for the Software.
Data Capacity	Data Capacity is the amount of data capable of being stored on the Device utilized by the Software.
Database	A Database is a container of Lotus Notes ("Notes") objects that can exist on a Notes/Domino server or a Notes client. Multiple replicas of a particular database count as the same database.
Database Shard	A Database Shard is a process provisioned through or by a database software product related to load distribution, including but not limited to a master database process, replica database process, or process supporting a part of a database or clustered database.
Deployed Image	A Deployed Image is an Image deployed by the Software onto one computer. An Image is a copy of an operating computer environment created and distributed as a file or other digital object.
Desktop	A Desktop is one instance of a single user operating system on a single user computer.
Device	A Device is any physical or virtual machine or peripheral equipment connected to a network, including, but not limited to those which store, process, transmit, capture, or display data. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Device Capacity	Device Capacity is the amount of data capable of being stored on the Device utilized by the Software.
Email User	An Email User is one person with an email mailbox, regardless of the number aliases that person has. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
Enabled AD LDS User Acct	Enabled Active Directory (AD) Lightweight Directory Services (AD LDS) User Accounts are all the user accounts in the AD LDS instances to be managed by the Software. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.
Enabled User Account	Enabled User Accounts are all the user accounts in the domain(s) to be managed by the Software, including, but not limited to, users' logon accounts, secondary accounts tied to users, administrative accounts, service accounts, test accounts, and iNetOrgPerson objects. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.
Enabled User Object	Enabled User Objects are all the user account in the domain(s) to be managed by the Software.
Enterprise License	Software licensed by this License Type may be used on an unlimited number of devices within customer's organization.
Enterprise Base Server	The Enterprise Base Server is the designated server(s) on which the Software is installed and used with the number of client machines separately licensed by Customer. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.

EPIC User	An EPIC User is a User with access and use rights to software separately licensed by Epic Systems Corp. Software licensed by this License Type is sold on a tiered basis. Customer must purchase the license tier associated with the total number of EPIC Users in their environment (e.g. 1-10000 EPIC USERS, 10001-50000 EPIC USERS, or 50001+ EPIC USERS). Software licensed by this License Type may only be used in conjunction with One Identity's Identity Manager Product and is subject to Product Specific Terms in Part 2 of the Product Guide.
External User	An External User is any User that is not an Internal User or IDM User, such as business partners, service providers, and customers.
Factored Core	A "Factored Core" is a Core multiplied by the applicable "Core Processing Licensing Factor" in the Oracle Core Factor Table as of the date of the installation of the Software. The Oracle Core Factor Table is currently published at http://www.oracle.com/us/corporate/contracts/processor-core-factor-table-070634.pdf . The license quantity required for each device on which Software licensed by Factored Core is installed must be the total number of Factored Cores on each such device.
Farm	A Farm is a collection of Servers that work in concert to provide a set of basic SharePoint services.
Front End Data Capacity	Front End Data Capacity is the amount of data capable of being managed by the Software on the Front End Server.
Front-End Server	A Front-End Server is a SharePoint server that accepts requests from clients and proxies them to the appropriate back-end SharePoint server for processing. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Front End TB	A Front End TB is one terabyte of data to be duplicated or otherwise managed by the Software.
FTR-A Instance	An FTR-A Instance is an installation of the Software on a physical or virtual machine for script development or script playback. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Functional Named User	A Functional Named User is a Named User that may only use the Software for the purposes of management reporting, and central audit and artifact repository use and may not access or use the version control component of the Software or (1) Check-in/Check-out objects; (2) Archive objects; or (3) Migrate objects functionality. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
Host ID	Host ID means the specific computer on which the Software may be used. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
IDM Concurrent Session	An IDM Concurrent Session is created and exists for the duration of a user's connection, created by the Software, to a remote computer or Device.
IDM User	An IDM User is a person's account or a Service Account that uses or accesses the Software. A Service Account is an account used to provide access between application software and data. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used unless such accounts are otherwise licensed as an External User.
Inactive User	An Inactive User means a User who is marked in the Software as being inactive (e.g., Person table, "IsInactive" flag is set to True), and remains in the inactive state for the duration of the applicable license term. If the User is partially active for any portion of the license term, that User is counted as active and is not an Inactive User. If the Software does not have built-in functionality to mark a User as inactive, this License Type will not be valid for such Software and Users will be counted as active.

Indirectly Managed Physical CPU	An Indirectly Managed Physical CPU is a physical CPU on a physical Device that is managed by non-Foglight management tools and which send events or data to the Foglight Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Installed Host	An Installed Host is a virtual or physical machine that has an associated IP address. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Instance	An Instance is a database server executable existing independently of other database server executables.
Institution	An Institution is an educational institution.
Interface	An Interface allows a Device to communicate to a computer network. Interfaces include, but are not limited to switch ports, physical, virtual and sub-interfaces, VLANs and any other single point of network traffic. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Internal User	An Internal User is any full-time, part-time, contract employee, or contractor of Customer.
IP SLA Source Device	An IP SLA Device is a Device that generates the packets to a destination. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Keystone Application	A Keystone Application is a group of program or information objects assigned a unique application ID by the Software.
Keystone User	A Keystone User is the identity of a person or an object authenticated or authorized by the Software.
Limited Core CPU Socket	A Limited Core CPU Socket is a connector on a computer's motherboard that accepts integrated circuit packages containing up to four (4) Cores. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Limited CPU Server	A Limited CPU Server is a server with no more than four (4) Limited Core CPU Sockets. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Lite Managed Person	A Lite Managed Person is a Managed Person that is considered to be a limited use user (which may include retail location employees, manufacturing line workers, etc.) and have assigned "X" or fewer user accounts being managed by the Software. "X" will be the number of user accounts stated in the product description in the Order; and if no number is so stated, X will default to three (3). A Lite Managed Person cannot be a Managed External Person. If the Software does not have built-in functionality to count the number of user accounts that the employee or contractor has access to, this License Type will not be valid for such Software and all applicable employees and/or contractors will be counted as a standard Managed Persons. Also, if any employee or contractor has assigned more than "X" user accounts, as of the date of that assignment Customer must purchase or use a Managed Person license for that employee or contractor and that employee or contractor will no longer be counted as a Lite Managed Person.
Log Source Host ("LSH")	A Log Source Host ("LSH") is any host, server, or device (including virtual machines, active or passive networking devices, syslog-ng clients and relays, and so on) that is capable of sending log messages. Log Source Hosts are identified by their IP addresses, so virtual machines and vhosts are separately counted.

Machine ID	Machine ID means (i) for server based Software, the specific computer on which the Software may be used or (ii) for client based Software, the specific server with which the Software may be used. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Mailbox	A Mailbox is a Microsoft Exchange mailbox.
Mainframe	A Mainframe is the IBM s/390 or zSeries engine and machine designated by Customer at the time the license is activated. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Mainframe LPAR	A Mainframe LPAR is a logical partition running on a Mainframe. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Managed Account	A Managed Account is any account in the domain to be managed by the Software. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.
Managed Computer (Mngd Comp)	A Managed Computer (Mngd Comp) is any computer, PC, Server, tablet, or smartphone tracked or managed by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Managed Desktop (Application)	A Managed Desktop (Application) is a physical or virtual desktop on which one or more Applications being managed by the Software appear or are available. An Application is an item of software usable by the user of the Desktop.
Managed Device	A Managed Device is a Device with a unique IP address. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Managed DNS Record	A Managed DNS Record is a DNS record managed by the Software.
Managed External Person	A Managed External Person is a person who is not a full-time, part-time, or contract employee, or contractor of Customer but who has one or more LAN, WAN, Cloud, or on-premises based account capable of being managed by the Software.
Managed GB	A Managed GB is one gigabyte (1,000,000,000 bytes) of information to be managed by the Software.
Managed Identity	A Managed Identity is a unique digital representation of a person or thing that is maintained in an identity repository.
Managed Mailbox	A Managed Mailbox is a mailbox within Customer's organization or information store, but excluding public folder mailboxes, system mailboxes and disabled mailboxes. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.
Managed Node	A Managed Node is a single Appliance managed by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.

Managed Non-Human	A Managed Non-Human is a digital credential or identity - used by machines, applications, service agents, or automated processes or other non-human process to execute tasks and activities - that is managed by the Software. A Managed Non-Human is not tied to an individual, but rather serves roles like accessing resources, data transfer, or performing automated workflows or operations.
Managed OS Instance	A Managed OS Instance means a single instance of an operating system, whether installed on a physical or virtual machine which is managed by the Software.
Managed Person	A Managed Person is any full-time, part-time, or contract employee, or contractor of Customer with one or more LAN, WAN, Cloud, or on-premises based accounts capable of being managed by the Software.
Managed Person - Tier 2	A Managed Person - Tier 2 is a Managed Person that is considered to be an individual within an organization whose primary responsibilities or activities do not require regular use of a dedicated Customer-managed computing device or advanced productivity software. Examples include students engaging in classroom activities, manufacturing line employees, or customer-facing retail personnel utilizing shared store devices. A Managed Person - Tier 2 cannot be a Managed External Person.
Managed Physical CPU	A Managed Physical CPU is (i) any physical CPU used by an application that is managed by Foglight; (ii) any physical CPU used by a database that is managed by Foglight; (iii) any physical CPU used by a Web server whose end-user traffic is managed by Foglight; (iv) any physical CPU used by a Web server that is managed by Foglight; (v) any physical CPU used during the execution of Foglight Transaction Recorder players; (vi) any physical CPU used by an OS that Foglight is managing; (vii) any physical CPU that is executing a custom Foglight agent (either Quest-, customer-, or partner-created); or (viii) any physical CPU used by a Web server that end users pass through. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Managed Port	A Managed Port is a physical network port that is managed by Foglight for either data link (Layer 2) or network (Layer 3) communications. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Managed Resource	A Managed Resource is a resource residing at the unique IP addresses which will be managed by the Software.
Managed Seat	A Managed Seat is a computer, Terminal Server session, or other thin-client session to be managed or administered by the Software.
Managed Secret	A Managed Secret is a secret managed by the Software.
Managed Server	A Managed Server is any computer running a server version of a Microsoft or other operating system. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Managed TB	A Managed TB is one terabyte (1000 Managed GBs) of information to be managed by the Software.
Managed User	A Managed User is a person with defined access on the source or target environment.
Managed User Account	A Managed User Account is an account associated with a person in the domain to be managed by the Software.
Managed Workstation	A Managed Workstation is any computer running a workstation version of a Microsoft or other operating system. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Migrated Archive Mailbox	A Migrated Archive Mailbox is an email mailbox which Customer has archived that is migrated by the Software. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
Migrated Database	A Migrated Database is a database to be migrated by the Software. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).

Migrated GB	A Migrated GB is one gigabyte (1,000,000,000 bytes) of information to be migrated by the Software. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
Migrated TB	A Migrated TB is one terabyte (1000 Migrated GBs) of information to be migrated by the Software. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
Migrated Team	A Migrated Team is a Team in the Microsoft Teams platform to be migrated by the Software. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
Migrated Mailbox	A Migrated Mailbox is the data associated with a single, unique, primary Internet electronic mail address to be migrated by the Software. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
Migrated Sametime User	A Migrated Sametime User is any full-time, part-time, or contract employee, or any contractor of Customer with one or more LAN or WAN accounts on Customer's network capable of being migrated from one application to another. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
Migrated User Account	A Migrated User Account is a single Windows-based or Cloud-based service (e.g., Office 365, Google App, Jive) user account to be migrated. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
Migrated Workstation	A Migrated Workstation is any computer running a workstation version of a Microsoft operating system to be migrated by the Software. Software licensed by this License Type may only be used for one migration project (from one environment to another environment).
MIPS Based Licensing	MIPS (millions of instructions per second) is the speed of the processor on the mainframe on which the Software is installed. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Monitored Core	A Monitored Core is a Core on a server containing an Object to be monitored by the Software.
Monitored Host	A Monitored Host is a Host with a unique IP address that is monitored by the Software. A Host is a virtual or physical computer that is used to run processes, systems, databases, applications, or for other multi-user purposes.
Monitored Instance	A Monitored Instance is an Instance monitored by the Software and exists for the time during which a database Instance is being monitored by the Software.
Monitored Limited Core CPU Socket	A Monitored Limited Core CPU Socket is a Limited Core CPU Socket on a server containing an Object to be monitored by the Software.
Monitored Node	A Monitored Node is any Device connected to a computer network, including but not limited to a computer, server, router, switch, PC, personal digital assistant (PDA), cell phone, or other network appliance, that is monitored by the Software.
Monitored Server	A Monitored Server is a Server monitored by the Software.
Monitored Target	A Monitored Target is a Named Instance, Azure SQL Database, Database Shard, or Warehouse Node monitored by the Software.
Monitored User	A Monitored User is one user account defined in the XenDesktop management server being monitored by the Software.
MQ Processor Socket	An MQ Processor Socket is a CPU Socket on which IBM WebSphere MQ is installed and which is managed by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Multifactor User	A Multifactor User is a QAS User Account using smart card or other multifactor methods. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.

Named Computer	A Named Computer is a named end-user computing device. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Named Instance	A Named Instance is each instance of a database, operating system, or application which is monitored by the Software, without regard to concurrent use.
Named Server	A Named Server is a named Server that is patched and managed by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Named User	A Named User is an individual specifically authorized to use the Software. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
.NET Application Managed Physical CPU	A .NET Application Managed Physical CPU is a CPU of either a client machine or server on which an application that is hosted by the Microsoft .NET Framework is installed and managed by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
.NET Processor Socket	A .NET processor socket is (i) each CPU Socket of either a client machine or server on which an application that is hosted by the Microsoft .NET Framework is installed and managed by the Software; or (ii) any CPU Socket that is executing a custom Foglight agent (either Quest-, customer, or partner-created). Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Network Flow Device	A Network Flow Device is an information processing network switching device, such as NetFlow. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Nexus	A Nexus is a server upon which the Software is installed. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Node	A Node is any Device connected to a computer network, including but not limited to a computer, server, router, printer, switch, PC, personal digital assistant (PDA), cell phone, or other network appliance, that is managed or monitored by the Software.
Non-Production or Non Prod	A Non-Production or Non Prod license may be used only as part of internal development and test environments, including and limited to testing, performance tuning, quality assurance, benchmarking, staging, and/or development.
NV Front End Capacity	NV Front End Capacity is the amount of data on the source computer to be backed up or de-duplicated by the Software.
OL Adaptive Rate Multiplier	Each OL Adaptive Rate Multiplier license shall increase, by a multiple of 1, the default rate limit for an endpoint for purposes of increasing capacity for calls to the Software platform within the stated time period in the rate limit.
OL Connector	An OL Connector is a data transfer mechanism between the Software platform and an application or directory.
OL Delegated Admin User	An OL Delegated Admin User is a unique User who has been granted an elevated privilege create by the Software's Delegated Admin feature. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).

OL Monthly Active User	OL Monthly Active User measures the number of Active Users for a calendar month. An Active User is an identity in the Software directory that performs an action in the Software or performs an action on a third party service which triggers an activity in the Software. An Active User is only counted once during a calendar month. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
OL On Premises Connection	An OL On Premises Connection is an on-premises application or directory that is to be connected to the Software platform.
OL Server Accessed via RDG	An OL Server Accessed via RDG is a single physical computer or virtual machine used to provide services or resources to one or more users, where the access to the server is managed by Microsoft RD Gateway.
OL Service Accounts	An OL Service Account is a non-User account that is monitored by or used with the Software.
OL Student User	An OL Student User is any full-time or part-time student of an educational institution. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
OL Telephony Credit	The purchased quantity of OL Telephony Credits is equal to the price paid by Customer for that quantity, and OL Telephony Credits are consumed each time a customer opts to use telephony services for multi-factor authentication purposes, including SMS message sends or voice calls. The quantity of consumed OL Telephony Credits are calculated based on then-current telephony services pricing for such services.
OL Tenant	Each Customer environment within the Software portal with a unique tenant ID number.
OS Instance	An "OS Instance" is an instance of an operating system whether installed on a physical or virtual machine.
Per Connector	A Connector is Software allowing one way, or bi-directional, alert / event synchronization between two designated third party management platforms / frameworks. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Physical Server	A Physical Server is a single physical computer used to provide services or resources to more than one user. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Playback Credit	A Playback Credit is one use of the Software to display an event recorded by the Software, such as transport from one web page to another.
Production Environment	A Production Environment is one application installation using one production database instance and the non-production environments used to support it for testing and development.
Professor User	A Professor User is one (1) named individual who is a faculty member at an educational institution that teaches Student Users use of the Software to meet course objectives. A Professor User may use the Software for non-commercial purposes only, including for teaching, curriculum development, and academic research in preparation for teaching. A Professor User License is non-transferable, and cannot be used for commercial, production, or consulting purposes.
Protected Database	A Protected Database is an instance of SQL Server running in a virtual machine or on a physical host.
Protected Desktop	A Protected Desktop is a Desktop that is backed up or replicated by the Software.
Protected Machine	A Protected Machine is either (i) one VM or (ii) one Physical Server that is not running virtualization software, either of which is being managed by the Software.
Protected Physical Server	A Protected Physical Server is a Physical Server that is backed up or replicated by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.

Protected Physical Server or CPU Socket	Protected Physical Server or CPU Socket is a license that may be used on either (a) one Protected Physical Server or (b) one CPU Socket on a Server that is being used to create a virtual environment.
Protected Server	A Protected Server is a Server containing data that is backed up or replicated by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Protected Virtual Server	A Protected Virtual Server is a Virtual Server that is backed up or replicated by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Protected VMware Host	A Protected VMware Host a Protected Server running VMware. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Protected VMware Host CPU Socket	A Protected VMware Host CPU Socket is a CPU Socket on a Protected Server running VMware. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Published Object	A Published Object is any object published by Microsoft Exchange, Active Directory, Azure Active Directory or Domino/Notes, including but not limited to users, groups, and contacts.
QAS-Enabled Cluster System	A "QAS-Enabled Cluster System" is a computer configured with a master administrative system image that utilizes the QAS client software while also controlling access to and authentication for any number of slave processing images.
QAS-Enabled Mainframe Partition	A QAS-Enabled Mainframe Partition is an IBM s/390 or zSeries Logical Partition (LPAR) that utilizes QAS client software in multiple virtual computer images.
QAS Server	A QAS Server is a physical or virtual computer (or an OS instance, a domain, or a partition on a physical or virtual computer) on which the QAS Software is installed and which is used to provide an application or service to multiple users. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
QAS User Account	A QAS User Account is a Unix-enabled user account within Microsoft® Active Directory that is used by one person and is managed by the QAS Software. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
QAS Workstation	A QAS Workstation is a physical or virtual computer (or an OS instance, a domain, or a partition on a physical or virtual computer) on which the QAS Software is installed and which is used by only one user at any time. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.

QSI Server	A QSI Server is any machine, physical or virtual, running a software application that employs QSI Single Sign-on for Java server-side components to authenticate users in Microsoft Active Directory. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
QSI User Account	A QSI User Account is a user account within Microsoft® Active Directory (use limited to one person) which uses the QSI Single Sign-on for Java Server software to authenticate a network connection. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.
Recovered Mailbox	A Recovered Mailbox is an object copied, moved, or exported from an email source managed by the Software to another storage location, such as an Exchange online or archive database.
Seat	A Seat is a User, except for Desktop Authority, for which a Seat is a Device. For Software licensed by this License Type, a license is required for (a) each User who has the ability to access, use, display, run, or otherwise interact with the Software on a shared device or in a virtualized or cloud environment and (b) for every single-user device on which the Software is installed. However, in no case shall a User require more than one license. Licenses allocated to employees who have left the employ of Customer or allocated to contractors that are no longer providing services to Customer may be re-allocated to new users. Additionally, Customer may re-allocate Licenses of this License Type to new Users if Customer can document that the original user's right to access or use the Software has been permanently terminated.
Server	A Server is a single physical computer or virtual machine used to provide services or resources to more than one user. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Server Tier	A Server Tier is the size of a Server as determined by how many CPU Sockets are contained on the server. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Single Source and/or Target	Single Source and/or Target is one Server or Server cluster running one or more databases that are used as either a data replication source and/or target by the Software. Each Single Source and/or Target is limited to a set quantity of License Types (e.g. Per Core, Per CPU Socket, Per vCPU) that power the Single Source and/or Target. The license quantity for Software licensed by this License Type must be at least the total number of License Types (e.g. Per Core, Per CPU Socket, Per vCPU) that power the Single Source and/or Target. Any system running in a virtualized environment, including Infrastructure as a Service (IaaS) and Database as a Service (DBaaS), must license by vCPU. The quantity of Cores, CPU Sockets, vCPUs, etc. associated to a Single Source and/or Target license are allocated to one and only one data replication source and/or target (i.e. a 100 vCPU Single Source and/or Target license may not be allocated to 5 replication sources with 20 vCPUs each). Allocated Cores, vCPUs, CPU sockets, etc. cannot be moved to new replication sources or replication targets, unless they are being used to license a replacement Server for the originally licensed replication source/target.

Single Target	A Single Target is one Server or Server cluster running one or more databases that are used as a data replication target by the Software. Each Single Target is limited to a set quantity of License Types (e.g. Per Core, Per CPU Socket, Per vCPU) that power the Single Target. The license quantity for Software licensed by this License Type must be at least the total number of License Types (e.g. Per Core, Per CPU Socket, Per vCPU) that power the Single Target. Any system running in a virtualization environment, including Infrastructure as a Service (IaaS) and Database as a Service (DBaaS), must license by vCPU. The quantity of Cores, CPU Sockets, vCPUs, etc. associated to a Single Target license are allocated to one and only one data replication target (i.e. a 100 vCPU Single Target license may not be allocated to 5 replication targets with 20 vCPUs each). Allocated Cores, vCPUs, CPU sockets, etc. cannot be moved to new replication targets, unless they are being used to license a replacement Server for the originally licensed replication source/target.
Slot	A Slot is a single physical connection point to a server for a storage device. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Soft Token	A Soft Token is an additional software token used by a Soft Token User.
Soft Token User	A Soft Token User is one individual unique user who installs and uses the Software whether the Software is installed on a single user device, a network storage device, or a virtualized or shared environment (such as a Citrix server). Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
Source Server	A Source Server is a server that stores data to be migrated to a target environment. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Standard Lotus Notes Database	A Standard Lotus Notes Database is a Lotus Notes Database with a design that matches one of the unmodified standard Lotus Notes database templates: Discussion, Document Library, Domino.doc Cabinet, Team Room, QuickPlace, Quickr, QuickPlace Subroom, or Quickr Subroom.
Student User	A Student User is one (1) named individual currently enrolled in an academic course at a qualified educational institution requiring use of the Software. A Student User may use the Software for educational use only, and a Student User License is non-transferable, valid only during the applicable academic term or subscription, and cannot be shared or reassigned.
System	A System is one application, operating system, or database with a unique account management structure to be managed by the Software.
Tape Drive	A Tape Drive is a single tape storage Device or tape storage emulation Device. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Target Cluster	A Target Cluster is a Cluster that is being used as a data replication target by the Software where a "Cluster" is a group of inter-connected computers that work together to perform computationally intensive tasks.
Target Namespace	A Target Namespace is an Azure Event Hubs Namespace that is being used as a data replication target by the Software.
Target Stream	A Target Stream is the replication flow from a specific source to a specific destination such as Kafka, JMS, or filesystem.
Teams Enabled User	A Teams Enabled User is any User who is an owner or member of a Team or has access to a Team in the Microsoft Teams platform. The license quantity for Software licensed by this License Type must be at least the total number of Teams Enabled Users in Customer's Microsoft Teams environment.

Technician or Tech	A Technician or Tech is a person who uses the Software to manage a helpdesk. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
Technical Named User	A Technical Named User is a Named User granted full access to and use of the Software. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
Third-Party Application Instance	A Third-Party Application Instance is any instance of a third-party monitoring or service desk software application being monitored by the Software.
TiB of Capacity	A TiB of Capacity is one tebibyte of storage capacity, or portion thereof, utilized by the Software. A tebibyte is 240 bytes.
Token	A Token is a software object used to authenticate one person.
User	A User is a named individual or unique login identity. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).
Virtual Appliance	A Virtual Appliance is a virtual machine image designed to run on a virtualization platform.
vCPU	A vCPU (virtual CPU) represents a portion or share of a physical CPU that is assigned to a virtual machine. The license quantity required for each Server on which Software licensed by vCPU is installed must be the total number of vCPUs utilized by the Server, as indicated by the virtualization platform.
Virtual CPU Socket	A Virtual CPU Socket is a CPU Socket on a physical server that is being used to create a virtual environment.
Virtual Desktop	A Virtual Desktop is any computer running a Virtual Machine with one Guest Operating System installed. A Guest Operating System is an instance of a third-party operating system licensed by Customer, and installed in a Virtual Machine and run using the Software. A Virtual Machine is an instance of a Guest Operating System and any application programs installed thereon, running on a computing device on which the Software is installed, or suspended to disk or any other storage media accessible by the computing device.
Virtual Firewall	A Virtual Firewall is a firewall managed by the Software in a virtual environment.
Virtual Machine	A Virtual Machine or VM is an instance of a Guest Operating System and any application programs installed thereon, running on a computing device on which the Software is installed, or suspended to disk or any other storage media accessible by the computing device. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Virtual Server	A Virtual Server is a single virtual machine used to provide services or resources to more than one user. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Virtual Users	Virtual Users are concurrent user database sessions created by the Software.
Warehouse	A Virtual Warehouse, often referred to simply as a “Warehouse”, is a cluster of compute resources in Snowflake. A Warehouse provides the required resources, such as CPU, memory, and temporary storage.
Warehouse Node	A Warehouse Node, commonly known as a “credit,” denotes the quantity of virtual machines (VMs) within the compute cluster of a Snowflake Warehouse. Computing resource information for Snowflake Warehouses may be found at https://docs.snowflake.com/en/user-guide/warehouses-overview .
Web Farm User	A Web Farm User is one individual within Customer’s organization with defined access to one SharePoint web farm. Software licensed by this License Type may be used by one User on an individual computer, on a network storage device, or in a virtualized or shared environment (such as a Citrix server).

Web Front End or WFE	A Web Front End ("WFE") is defined as any server running in the "Microsoft SharePoint Foundation Web Application" service. This can be verified in the "Servers in Farm" section of Central Administration. A license is required for each WFE that provides Users with access to the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
Windows Machine	A Windows Machine is an internet-connected physical or virtual computer running the Windows operating system on which the Software is installed.
Workflow Task	A Workflow Task is a unit of work associated with an action that requires compute resources, including a connector's action, and a Workflow Task is consumed each time such unit of work is performed.
Workstation	A Workstation is one computer used by one person. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.

PART 2 - PRODUCT SPECIFIC TERMS

AppAssure Backup and Replication – All Editions	The Software includes the Replay Recovery Console which is based on the Microsoft® Windows® Preinstallation Environment (“WinPE”). Quest’s WinPE license agreement with Microsoft Licensing, GP specifically requires the end user to accept certain terms and conditions. Accordingly, and notwithstanding any other provision of the Agreement to the contrary, Customer hereby further agree as follows: (a) The Replay Recovery Console is limited to use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program, and is not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system product; (b) WinPE IS PROVIDED “AS IS” AND WITH ALL FAULTS; (c) THE REPLAY RECOVERY CONSOLE CONTAINS A SECURITY FEATURE THAT WILL CAUSE THE COMPUTER SYSTEM TO REBOOT WITHOUT PRIOR NOTIFICATION TO THE END USER AFTER 24 HOURS OF CONTINUOUS USE (OR 72 HOURS OF CONTINUOUS USE IN THE CASE OF CERTAIN VERSIONS OF WINPE); (d) Any and all liability of Microsoft Licensing, GP (and any entity that directly or indirectly controls, is controlled by, or is under comment control with Microsoft Licensing, GP, including Microsoft Corporation) related to Software, including the Replay Recovery Console and WinPE, are disclaimed in full and without condition; (e) All customer support issues relating to the Software will be handled solely by Quest; (f) Customer is specifically prohibited from reverse engineering, decompiling or disassembling WinPE, except to the extent expressly permitted by applicable law; and (g) The Software is subject to U.S. export jurisdiction.
AppAssure, KACE, and Ocarina Appliance Warranties.	The warranties for AppAssure, KACE, and Ocarina Appliances (“KOA Appliance(s)”) consist of the following: (1) If Quest determines that an error or malfunction of the KOA Appliance can be resolved by the replacement of a part designed to be replaceable by customers, (“Customer Replaceable Part”), then, on the business day following such determination, Quest will ship the Customer Replaceable Part to Customer for next day delivery. (2) If Quest determines that a Customer Replaceable Part would not resolve the error or malfunction, then the following shall apply. For Customers that have purchased Standard, 24X7, or Premier Maintenance Services for the Software on the KOA Appliance (“KOA Software”), Quest will provide onsite parts replacement on the business day following Quest’s determination that the KOA Appliance is the source of the reported error or malfunction. For Customers that have purchased a “four hour upgrade” to 24X7 or Premier Maintenance Services for the KOA Software, Quest will provide onsite parts replacement four hours following Quest's determination that the KOA Appliance is the source of the reported error or malfunction. Customer must purchase the same level of Maintenance Services (e.g., Standard, 24X7, Premier) for the KOA Appliance as it has purchased for the KOA Software. The KOA Appliance warranties stated above shall be provided for one year from the date of the delivery of each KOA Appliance at no additional charge and may be renewed, for a fee, for up to four years thereafter.
Change Auditor Threat Detection	You must purchase licenses for Change Auditor Threat Detection based on the number of Servers the Software will be used on and the total quantities of the License Type in use. Each line item for Change Auditor Threat Detection on an Order may only be used on a single Server. The total quantity of License Types managed by the Software (e.g. Managed Person, Enabled User Account, etc) across all licensed Servers may not exceed the totally quantity of licenses, by License Type, purchased by Customer. For example if you purchase 50 Enabled User Account licenses on one line item and 100 Enabled User Account licenses on a second line item, you may install Change Auditor Threat Detection on two Servers and between those two Servers you may manage 150 Enabled User Accounts. If you need to replace an originally licensed Server the replacement Server must replace the original Server and be used for the same purpose as the replaced Server.

Quest KACE Products	☞ K1000 Express Software. The K1000 Express Software (“K1000 Express”) is provided as Freeware with a License duration of one year from the date it is installed on Customer’s server, after which the K1000 Express License shall terminate. Customer may install only one instance of K1000 Express in each of its physical locations and may only use K1000 Express for up to 1,000 Managed Computers. If Customer wishes to exceed the limitations stated in the prior two sentences, it must purchase licenses for the full version of the K1000 Software. ☞ K1000 Asset Management Appliance. The K1000 Asset Management Appliance is delivered with the "Share Summary Usage Data About Hardware, Software, and the Appliance with Quest" option enabled and Customer may not disable it. Customer may not use the following features on the K1000 Asset Management Appliance: Monitoring, Distribution, Scripting, Security ((including Patch Management, OVAL/SCAP scans, and Quest Updates), Service Desk (with the exception of Ticket Rules configured specifically for updating Asset data), User Console, and the non-inventory and non-asset management features of the K1000 GO mobile application (each, a "Non-Usable Feature"). Customer's use of any Non-Usable Feature shall be deemed a material breach of the agreement governing the use of the K1000 Asset Management Appliance. Maintenance Services for the K1000 Asset Management Appliance do not include resolving any problems or disruptions that may occur as the result of Customer's use of any Non-Usable Feature. ☞ Use of Quest KACE Software on other Appliances. Except as otherwise provided in the Agreement or expressly agreed by Quest, You may not, and will not allow a third party to use a Quest KACE Software product that was loaded by Quest onto a specific Appliance separately from such Appliance. ☞ Root Directory. Quest does not provide its customers access to the root directory on the KACE appliances. If Customer discovers a means to access the root directory, such access will void all warranties and Quest’s support obligations thereafter.
Quest KACE Products (cont'd)	☞ ITNinja Live feature within Quest KACE Products. If at any time during the applicable License term You opt to activate the ITNinja Live feature within a Quest KACE Product, You agree that Quest may collect, store, aggregate, analyze, and disclose to other Software users and to the general public the data collected by Quest from such feature (the “Data”) in anonymous, aggregate form. You further understand and agree that any information You choose to manually disclose through the ITNinja Live feature may be used and disclosed by Quest in accordance with the foregoing sentence. In such cases, You grant Quest a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data. ☞ Microsoft Software associated with Quest KACE Products. You acknowledge that the Quest KACE Products may include certain software and materials licensed to Quest by Microsoft Corporation and/or its affiliates (the “Microsoft Software”). You agree that (i) this license is limited to use of Quest KACE Products containing Microsoft Software as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program, and not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system product; (ii) the Quest KACE Products containing the Microsoft Software contains a security feature that will cause the computer system to reboot without prior notification to the end user after 24 hours of continuous use; and (iii) all computer support issues will be handled solely by Quest. ☞ Supplemental Terms for MySQL Software associated with Quest KACE Products. You acknowledge that the Quest KACE Products may include certain software and materials licensed to Quest by MySQL Inc., Oracle, and/or an affiliate of MySQL Inc. or Oracle (the “MySQL Software”). You may only use the MySQL Software for your internal business purposes and not as a service bureau, unless You are a Quest Alliance Partner or otherwise expressly authorized in writing by Quest. You may not copy MySQL Software onto any public or distributed network, use it as a general SQL server, as a stand-alone application or with applications other than the Quest KACE Products licensed under the Agreement.
Quest Total Virtual Data Protection	Each item of Software included in the Quest Total Virtual Data Protection suite (except for vRanger itself) may only be used on virtual machines backed up or replicated by vRanger.

Quest Total Virtual Data Protection Database Edition	Each item of Software included in the Quest Total Virtual Data Protection Database Edition suite (except for vRanger itself) may only be used on virtual machines backed up or replicated by vRanger.
Quest Web Parts for SharePoint	For the Quest Web Parts for SharePoint licenses, Maintenance Services as defined in the "Agreement" shall only be available for the Software as delivered by Quest and only to those individuals who are currently trained by Quest in the use of Software. For clarification purposes, the design and usage of any application developed by any party using this Software is not supported by Quest unless otherwise mutually agreed upon by Quest and Licensee in a separate written agreement. Licensee understands and agrees that Quest's warranty obligations set forth in the Agreement shall extend solely to the Software as delivered from Quest and not to any applications developed as a result of the use of the Software. For clarification purposes, Quest shall have no warranty obligations whatsoever with regard to applications developed as a result of the use of the Software.
Designated Support Engineer	The Designated Support Engineer ("DSE") shall be Customer's first point of contact and coordinator for Maintenance Services involving the Covered Software. The DSE's services will be provided remotely during the standard business hours of the region of the "Ship-to" location stated above. Quest shall assign the person to be the DSE and may change such person in its sole discretion. If the DSE is unavailable (e.g., illness, vacation), Quest will assign another person to temporarily fulfill the DSE role. The DSE is provided as part of Maintenance Services under the terms and conditions governing the Covered Software.
erwin Products: Academic Edition	The Academic Edition is a version of the Product made available to individuals associated with qualified educational institutions that may be limited or restricted in functionality and features, as more specifically described in its Documentation. It is licensed solely for non-commercial use for academic courses. Use in production or commercial environments is strictly prohibited.
Foglight	Notwithstanding anything otherwise set forth in the Agreement, and subject to the terms and conditions set forth in this paragraph, Customer shall have the right to customize the Foglight product using the utilities built into the Foglight product. Customer understands and agrees that (1) Customer shall only use such customizations in accordance with its license rights set forth in the Agreement; (2) Customer shall have no right to distribute, sell, license, lease, loan or rent any such customizations; (3) Customer shall have no right to remove, replace or modify in any way any trademark, copyright, patent, product name, logo or restricted rights notice that is included within Foglight; and (4) Customer shall have no right to add any other trademark, logo or service mark to any portion of the Foglight product (including but not limited to the user interface, dashboards, reports or agents) that is (i) in close proximity to any of Quest's trademarks, logos or product names, (ii) larger in size than any of Quest's trademarks, logos or product names, or (iii) combined with any of Quest's trademarks, logos or product names. Customer understands and agrees that the MySQL Pro Database that is delivered with Foglight is to be used solely with Foglight and that all use of the MySQL Pro Database shall be governed by the terms and conditions of the Agreement. Additional Software may be delivered with [some or all of the items of/the] Software listed above ("Additional Software"). Any Additional Software may only be used to monitor the objects, database, or operating systems to be monitored by Software with which it is delivered.
Foglight APM SaaS.	(a) When Foglight APM SaaS is used to monitor Java, each APM Agent may only be used to monitor one Java Virtual Machine (JVM); (b) When Foglight APM SaaS is used to monitor PHP, each APM Agent may be used to monitor one or more PHP configurations running on a single physical or virtual Server, provided that all data collected from the monitoring is reported to a single application within Foglight APM SaaS; and (c) When Foglight APM SaaS is used to monitor .NET, each APM Agent may be used to monitor one or more IIS servers or .NET executables on a single physical or virtual Server, provided that all data collected from the monitoring is reported to a single application within Foglight APM SaaS.

Foglight Synthetic Monitor for Internet	The rate of Consumption for Foglight Synthetic Monitor for Internet is based on the character of the recorded event and the location of the system requesting the playback. The rate of Consumption shall be as displayed in the Administration section of the Product. All unused Playback Credits shall expire without right of refund twelve months after the date of the delivery of each purchase of Playback Credits.
Foglight Network Management System	For all Foglight Network Management System licenses the terms below shall apply. The terms herein shall take precedence over the terms of the Agreement. Capitalized terms not defined herein shall have the same meaning as those set forth in the Agreement. Foglight Network Management System is licensed per Interface.
Freeware	☞ Foglight Network Management Freeware. The terms and conditions that govern the use of the Freeware version of Foglight Network Management Server are located at http://communities.quest.com/community/foglight/nms. ☞ Privilege Manager for Sudo Freeware. The Privilege Manager for Sudo Freeware may only be used with ten (10) Managed OS Instances. Limitation of Liability and Damages. IN NO EVENT WILL Quest, ITS SUBSIDIARIES OR ANY OF THE LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES OF ANY OF THE FOREGOING BE LIABLE TO LICENSEE 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 DATA AND THE LIKE), WHETHER FORESEEABLE OR UNFORESEEABLE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF Quest OR A Quest REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. Quest'S CUMULATIVE LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO \$500.00. ☞ All Other Freeware Products. The following provisions shall apply to Customer's use of all other Freeware products. The terms outlined herein shall supersede any conflicting terms set forth in the Agreement. Capitalized terms not defined herein shall have the same meaning as those set forth in the Agreement. License. Quest hereby grants Licensee a non-exclusive and non-transferable, license to use the Freeware, in executable object code form only, for personal or internal business purposes, for the duration specified by Quest. Licensees who are partners of Quest may use the Freeware on their customer sites for promotional purposes only, provided, however, that if their customer wishes to obtain their own copy of the Freeware, Licensee must direct their customer to Quest's download site to obtain a copy of the Freeware. Quest may change the scope of use restrictions set forth herein at any time in its sole discretion. This license does not entitle Licensee to receive from Quest hard-copy Documentation, technical support, telephone assistance, or enhancements or updates to the Freeware. If Quest releases a commercial version of the Freeware, the parties shall agree upon the fees and terms of such use in a separate signed agreement. Disclaimer of Warranty. THE FREEWARE IS PROVIDED FREE OF CHARGE, AND, THEREFORE, ON AN "AS IS" AND UNSUPPORTED BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES THAT IT IS FREE OF DEFECTS, VIRUS FREE, ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT. NO USE OF THE FREEWARE IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER. Fees and Taxes. There is no fee for Licensee's use of the Freeware in accordance with the Agreement, however, Licensee is responsible for any applicable shipping charges or taxes which may be incurred under the Agreement, and any fees which may be associated with usage beyond the scope permitted herein.

Freeware (Continued)	Limitation of Liability and Damages. WITH RESPECT TO FREWARE, IN NO EVENT WILL QUEST, ITS SUBSIDIARIES OR ANY OF THE LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES OF ANY OF THE FOREGOING BE LIABLE TO LICENSEE 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 DATA AND THE LIKE), WHETHER FORESEEABLE OR UNFORESEEABLE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF QUEST OR A QUEST REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. QUEST'S CUMULATIVE LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO \$500.00.
Hardware (including Dell Hardware)	In the event Customer acquires Hardware under the Agreement, title to such Hardware shall pass to Customer upon shipment (unless such Hardware is rented, leased or loaned to Customer). Unless otherwise stated herein, Hardware shall be warranted in accordance with the warranty document delivered with the Hardware. In the event Customer acquires Hardware that is delivered with a third party warranty ("Third Party Warranty"), Customer will rely solely on the applicable third party for all Third Party Warranty obligations.

Identity Manager Healthcare Integration for Epic	The terms and conditions of use of the Software are governed by the Agreement between Quest and the Customer. Epic Systems Corporation ("Epic") is not a party to the Agreement between Quest and Customer, and the Agreement does not bind Epic in any manner. Quest and Customer agree that; 1) Epic makes no warranty or representation about the Software; 2) Epic is not responsible for any third party or Customer claims arising out of or related to the use of the Software; 3) Quest shall have the right to disclose or share the portion of the Agreement between Quest and Customer specific to the Software with Epic upon Epic's request; and 4) Epic is not responsible for providing any level of support for the Software. If Epic should choose to provide any support services related to the Software, Epic may charge the Customer for such services under the terms and conditions of a separate agreement with Epic. Customer agrees that Epic and any Epic owned entities are third party beneficiaries of the confidentiality and data protection portions of the Agreement between Customer and Quest. Customer may conduct an inspection of Quest's records through the use of a third party auditor mutually acceptable to Customer and Quest to verify Quest's compliance with the Epic App Orchard program terms, and Quest will reasonably cooperate with such inspection, This inspection will be at Customer's expense unless material non-compliance is discovered as a result of the inspection, in which case Quest will pay for the cost of such inspection. The Software is licensed for use in conjunction with Identity Manager only. When the Software is deployed to an Identity Manager Job Server, log files are generated based on the configuration of the Software by the Customer. The log files at this location log the Epic users' Community ID and Internal ID and any errors or exceptions returned by the Epic web services. These log files include; 1) JobService.log; 2) Synchronization Editor.log; 3) StdioProcessor.log and 4) HSCEpic.log. Epic data, the Epic Credentials, and ClientID that is accessed thru the Epic App Orchard program are stored in the Identity Manager database. The Software itself does not store any Epic related information or data and only facilitates the transfer of data between Identity Manager and the Epic web service. The duration of the transfer will depend on the type of attributes and quantity of data chosen by Customer's Identity Manager administrator for transfer between Identity Manager and the Epic web service. The Software supports the following Epic web services: 1) Epic Personnel Management (Category Security); CreateUser; UpdateUser; DeleteUser; ActivateUser; InactivateUser; ViewUser; ForcePasswordChange; SetUserExternalPasswords; SetUserPassword; 2) Epic Demographics (Category Common) UpdateUserDemographics; 3) Epic Interconnect; GetRecords and 4) EPIC Core; GetEnvironmentInformation, GetConnectivityInformation.
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	The following information is stored in Identity Manager for synchronization purposes and will reside in the Identity Manager database until the user is deleted from Identity Manager by an Identity Manager administrator: UserInternalID, UserCommunityID, UserExternalID, Name, UserComplexName, ContactDate, ContactComment SystemLoginID, LDAPOverrideID, AuthenticationConfigurationID, BlockStatus, IsActive, StartDate, EndDate UserAlias, UserPhotoPath, LinkedTemplatesConfig, UserSubtemplateIDs, Sex, EmployeeDemographics, ReportGrouper1, ReportGrouper2, ReportGrouper3, CategoryReportGrouper1, CategoryReportGrouper2, CategoryReportGrouper3, CategoryReportGrouper4, CategoryReportGrouper5, CategoryReportGrouper6, Notes, InBasketClassifications, PrimaryManager, UsersManagers, UserRoleIDs, DefaultLoginDepartmentID, CustomUserDictionaries, UserDictionaryPath, LinkedProviderID, ProviderAtLoginOption, IdentityIDs, ExternalIdentifiers, AuditUserID, AuditUserIDType, AuditUserPassword, EmailAddress, PhoneNumber, FaxNumber, Address, City, Country, County, District, HouseNumber, Lines, State, ZipCode. A copy of Quest Privacy Policy is located here: https://www.quest.com/legal/privacy.aspx
Identity Manager on Demand (IMOD)	Identity Manager on Demand (IMOD) includes a default data storage allocation which is detailed in in the IMOD Product Documentation. Customers who exceed this allocation may experience limitations in system performance or functionality. Additional storage capacity may be available subject to applicable fees and terms. Customers will be notified – as a notification in IMOD, via automated email notifications, through their designated account representative, or other method – when usage approaches the allocated threshold.
Instant Messaging Network Terms of Use	Customer understands and agrees that the Agreement does not modify or discharge Customer from compliance with the terms and conditions governing Customer’s use of any third party instant messaging service (“Instant Messaging Agreement”). Customer hereby agrees to comply with all applicable Instant Messaging Agreements, (ii) that Quest shall not be liable for Customer’s violation of an Instant Messaging Agreement, and (iii) to indemnify and hold Quest harmless from any liability related to Customer’s violation of an Instant Messaging Agreement. In addition, Customer understands and agrees that the Agreement does not guarantee the availability of any instant messaging networks and that Quest shall not be liable for any outages, discontinued services or termination of service by such third-party instant messaging providers.

JClass Software	- The JClass Products (JClass ServerViews and JClass DesktopViews) consist of JClass Libraries. The JClass Libraries may only be used as part of Customer's internal use applications (the "Applications(s)") and may not be included in a Customer software product that is sold or distributed to external entities. - JClass OEM and JClass Source Code licenses are also available and shall be governed by a separate written agreement between Customer and Quest. Source Code licenses are only provided in connection with an OEM license. - JClass DesktopViews consists of the following JClass components: Chart, JClass Chart 3D, JClass LiveTable, JClass PageLayout, JClass Elements, and JClass Gauge. JClass DesktopViews Chart is also licensed separately. - JClass DesktopViews and JClass DesktopViews Chart are licensed by Developer Desktop and may not be used on a Server. Each JClass DesktopViews and JClass DesktopViews Chart license may only be transferred to another Developer Desktop once each twelve month period for as long as the licenses are covered by Maintenance Services provided that Quest receives certification that the licenses have been removed from the previous Developer Desktop promptly following such transfer. - JClass ServerViews consists of the following JClass components: ServerChart, ServerReport and ServerGauge and may only be used to develop: (i) JavaServer Pages; (ii) Servlets (programs which are an extension of javax.servlet.Servlet); and (iii) stand-alone Java Applications. The individual components are also licensed separately. - JClass ServerViews is licensed by CPU based on the number of CPUs of the Servers that host the Application. There are Production and Development licenses. The Development licenses contain a "development use only" watermark and may only be used for development purposes. - The JClass Software is not designed or intended for use in high-risk activities including, without restriction, on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility.
KACE Appliance Warranty	See AppAssure, KACE, and Ocarina Appliance Warranties above.
Migration Suite for SharePoint	Migration Suite for SharePoint consists of Migration Manager for SharePoint, File Migrator for SharePoint, Public Folder Migrator for SharePoint, and Migrator for SharePoint Online.
Node Locked JPROBE	For each Node Locked license granted, Licensee may (i) install the Software on the platform indicated in the license granted by Quest, and (ii) use the Software on the specific machine designated by Licensee at the time the license is activated. The console may be installed on a separate machine which also shall be designated by Licensee at the time the Software is activated. Each pairing of the analysis engine with a console may be used by only one Named User.
Knowledge Portal Report Pack for Cobit Enterprise License	Licensee may install and use the Software for an unlimited number of concurrent sessions.
Ocarina Appliance Warranty	See AppAssure, KACE, and Ocarina Appliance Warranties above.
One Identity Manager On Demand	The Documentation for One Identity Manager On Demand includes restrictions on customizations. Ignoring these restrictions may cause the One Identity Manager On Demand Cloud components to become in an un-upgradable state. If this happens, additional professional services may be required at Customer's expenses to revert the One Identity Manager On Demand components to the original state or to install upgrades to the One Identity Manager On Demand components.

OneLogin Software	For OneLogin Software licensed by Internal User, External User, OL Student User, and/or OL Delegated Admin User, the number of licenses is the maximum number of such Users that can be assigned that role in Customer's systems that are tracked and/or managed by the Software. For OneLogin Software licensed by OL Monthly Active User, the number of licenses multiplied by 12 equals the maximum aggregate number of Active Users through the twelve-month period who may perform an action on the Software or may perform an action on a third party service which triggers an activity in the Software. In the event Customer exceeds the maximum aggregate number of Active Users licensed under this metric, Customer must pay for each additional Active User for the remainder of the subscription term. For OneLogin Software licensed by OL Monthly Active User, the number of licenses multiplied by 12 equals the maximum aggregate number of Active Users through the twelve-month period who may perform an action on the Software or may perform an action on a third party service which triggers an activity in the Software. In the event Customer exceeds the maximum aggregate number of Active Users licensed under this metric, Customer must pay for each additional Active User for the remainder of the subscription term.
OnWatch	Software license(s) for the OnWatch products are granted under the terms and conditions of the Systems Management Associates Software License and Support Agreement. Quest shall not have any obligation under the License Agreement or otherwise with regard to the OnWatch products, including but not limited to the obligation to warrant, support or provide indemnification protection for the OnWatch products.
Premier Plus Support (One Identity)	Premier Plus Support includes all aspects of Premier Support, plus an Advanced Support Engineer ("ASE"). Premier Support Plus for One Identity is limited to specific product lines (Active Roles, Log Management, Identity Governance, or Privilege Management). The applicable product line will be stated on your Order. Premier Plus Support for One Identity is available in three levels, Business, Enterprise, or Elite. The applicable level will be stated on your Order. The ASE is a semi-dedicated support engineer that provides oversight for all support requests, conducts knowledge sharing sessions, engages in application monitoring of the software covered by Premier Support Plus, provides upgrade assistance, and engages in quarterly health checks of the software covered by Premier Support Plus as furthered detailed in the Support Guide. Premier Support Plus includes the following percentage of an ASE's time depending on the level purchase: Business = 20% of an ASE's time; Enterprise = 50% of an ASE's time; Elite = 100% of a dedicated ASE's time.
Premier Plus Support (Quest)	Premier Plus Support includes all aspects of Premier Support, plus a Designated Support Engineer, and a block of expert service hours to use as directed by Customer for training, installation, configuration, deployment assessments, and other projects involving Customer's licensed Quest Products. The number of hours included will be stated on the Quotation or Order for Premier Plus Support. The hours will expire twelve months after purchase if unused. The expert services provided will be considered part of Maintenance Services. Customer and Quest will mutual agree on a scoping document for each project requested using the Premier Plus Support expert services hours to ensure parties are aligned on the number of hours to be used and the scope of services to be provided.
Premier Support	Premier Support includes (a) 24X7 Maintenance Services, (b) accelerated response times as stated the Support Guide, and (c) provides a shared, named Customer Success Manager ("CSM") as a single point of contact. The CSM shall provide introductory training in the use of the Maintenance Services, manage the escalation and resolution of Service Requests, provide monthly Service Request reports, and attend monthly calls with Customer to review priorities. Additionally, the CSM will communicate Customer priorities to the Quest support team, review and document Customer's Software assets, gain an understanding of Customer's environment and future plans, and provide proactive notification of Software patches and fixes.

Platform Management Technical Account Manager	The Platform Management Technical Account Manager offering provides a named Technical Account Manager ("TAM") as a shared and remote service, available for minimum terms of one year. The TAM is a semi-dedicated, designated point of contact who shall provide introductory training in the use of Maintenance Services, manage the escalation and resolution of Service Requests, provide monthly Service reports, and attend monthly calls with Customer to review priorities. The TAM will also provide best practices, technical advice, and guidance regarding the implementation, deployment, support, and operation of Quest Platform Management products. Additionally, the TAM will communicate Customer priorities to the Quest support team, review and document Customer's Software assets, gain an understanding of Customer's environment and future plans, and provide proactive Software patches and fixes. The Platform Management Technical Account Manager offering consists of 20% of a TAM's time.
PowerGUI	The Severity Levels outlined at www.quest.com/support shall not apply to PowerGUI licenses. Response time for all issues reported shall occur within twenty four (24) hours from the time in which the case is opened by Quest.
Privileged Account Products: Warranty	"PA Software" is a Quest Software product from its "Privileged Account" family of software products. "PA Appliance" is an Appliance on which PA Software is delivered. Warranty. Quest warrants that for one (1) year following the initial delivery of the PA Appliance, the PA Appliance will operate in a manner which allows the PA Software to be used in substantial conformance with the Documentation (the "PA Appliance Warranty"). Any breach of the PA Appliance Warranty must be reported by Customer to Quest during the applicable Warranty Period.
QAS or QSI	For the purposes of this paragraph, "you" means Licensee. If you obtain services, including logon, authentication, authorization and group policy services from Microsoft operating system products, you need to purchase additional licenses to use such products. Consult the license agreements for the Microsoft operating system products you are using to determine which licenses you must acquire. If you have already purchased the licenses required by Microsoft to use the Microsoft operating system products, this clause does not require you to purchase additional licenses.
QMX for SMS, or QMX for Configuration Manager 2007 or QMX Additional Microsoft License Requirements	For the purposes of this paragraph, "you" means Licensee. If you obtain services, including systems management services, from Microsoft Systems Management Server or Microsoft Configuration Manager 2007 products, you need to purchase additional licenses to use such products. Consult the license agreements for the Microsoft Systems Management Server or Microsoft Configuration Manager 2007 products you are using to determine which licenses you must acquire. If you have already purchased the licenses required by Microsoft to use the Microsoft Server products, this clause does not require you to purchase additional licenses.

QMX for SCOM, and QMX for SCCM Additional Microsoft License Requirements	Customer understands and agrees that QMX for SCOM and QMX for SCCM may contain the following Microsoft products: System Center Operations Manager and System Center Configuration Manager (the “Microsoft Products”). The rights and restrictions set forth in the Agreement that apply to the Quest Products shall apply in the same manner to the Microsoft Products. In addition, high risk use of the Microsoft Products is not permitted, including but not limited to, use in or in conjunction with aircraft or other modes of human transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug and Cosmetic Act. Customer hereby consents to the disclosure of Customer information from Quest to Microsoft for the purpose of reporting to Microsoft that Customer has licensed a product containing the Microsoft Products from Quest. To the extent permitted under applicable law, all warranties and liability of Microsoft with respect to the Microsoft Products shall be disclaimed, including but not limited to (i) warranties of title, non-infringement, merchantability and fitness for a particular purpose, (ii) any implied warranty arising from course of dealing or usage of trade, (iii) any common law duties relating to accuracy or lack of negligence, (iv) any warranty that the Microsoft Products will operate in connection with the applicable Quest Product or on any Customer system, and (v) any liability for damages, whether direct, indirect, incidental or consequential, as a result of the use and/or installation of the Microsoft Products. Customer represents and warrants that (i) it is not licensing Microsoft Products separate and apart from the applicable Quest Product, (ii) that the copies of the Microsoft Products that it receives from Quest do not entitle Customer to maintain on its computer systems any more copies of the Microsoft Products than it previously licensed from Quest or Microsoft, and (iii) it possesses and will maintain sufficient quantities of fully valid Microsoft licenses to support the maximum number of users and devices that may access or use the applicable Quest Product under the terms of the Agreement. For purposes of the Microsoft Products, Microsoft shall be an intended third party beneficiary of the Agreement with the right to enforce warranties and any other provisions of the Agreement and to verify the compliance of the Customer with the same.
QMX SMSE Managed Server	For each QMX SMSE Managed Server license granted by Quest Customer may use defined QMX products for management of a licensed physical server, or up to the licensed numbers of OSEs running on a single physical server or device.
QMX SMSD Managed CPU	For each CPU running on a physical server or device, Customer must purchase the corresponding number of QMX-SMSD Managed CPU licenses and may use such licenses to manage an unlimited number of OSE running on such physical servers or devices.
RemoteScan (when licensed by Connected Client)	Each copy of RemoteScan Software licensed by Connected Client is registered to the Device on which it is initially installed and may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Quest provides its written consent.
SharePlex	SharePlex requires licenses for every replication source and replication target. The product description in an Order denotes the system type (e.g. Oracle, SQL Server, Kafka, etc.) and the license model type (e.g. Single Source and/or Target, Target Stream, etc.) for that license. For SharePlex 10.x and lower only: Any installation of SharePlex (v10.x and lower) on a server running the Windows operating system requires a license that includes “WINDOWS” in the product description. In scenarios where a customer runs the SharePlex software on an intermediate server that is neither a replication source nor a replication target, all replication sources and replication targets must still be licensed. There is no requirement to separately license the intermediate software--the license associated with either the source or the target may be used to enable the intermediate server.
SonicWall Products	Effective June 1, 2017, the SonicWALL business was separated from Quest Software Inc. and became SonicWall Inc. If you have any documents that refer to Quest Software Inc., please go to https://www.sonicwall.com/legal/ to find the documents that govern your use of the SonicWall products.

Space Manager with Live Reorg	Space Manager with Live Reorg is licensed per Instance, and each Instance is limited to a set quantity of License Types (e.g. Per Core, Per CPU Socket, Per vCPU) for that Instance. Each Instance will be listed as a single line item on an Order and the quantity for such line item indicates the number of License Types that power the Instance. If you need to replace a licensed Instance, the replacement must be used for the same function and purpose as the original Instance and will be limited to the same database type and quantity of License Types originally purchased. Licenses may not be shared or otherwise transferred to different Instances.
STAT Unlimited Technical & Functional Users Promo License	The STAT Unlimited User license allows an unlimited number of Technical and Functional Named User to use the Software on as many Custom Applications, PeopleSoft and/or Oracle E Business Production Environments that Customer has separately licensed from Quest. A Custom Application shall mean any application other than PeopleSoft or Oracle E business applications.
StorageXpert	StorageXpert Software is licensed and priced based upon the storage capacity of Licensee's operating system and may only be used on an operating system of Licensee which does not exceed the Tier licensed by Quest.
Toad Business Intelligence Suite	Each license for Toad Business Intelligence Suite includes: ten (10) Named User licenses for Toad Decision Point Pro Edition, one (1) license for Toad BI OEM Component Quest Data, ten (10) Named User licenses for Toad Data Point Pro Edition, and one (1) Server license for Toad Intelligence Central. In addition, Customer understands and agrees that the MySQL Pro Database that is delivered with Toad Data Point is to be used solely with Toad Data Point and that all use of the MySQL Pro Database shall be governed by the terms and conditions of the Agreement.
TOAD Prepaid Training	Licensee hereby irrevocably agrees to pay for the training services specified in the relevant order documentation (the "Training Services"). The student and Licensee are jointly and severally liable for payment of all fees due to Quest. Students will be invoiced and pay in full for courses unless Quest has been notified in writing of the student's cancellation at least ten (10) working days before the commencement of the course. Quest reserves the right to vary or cancel a course at its discretion when necessary and will notify students accordingly as soon as reasonably practicable. The student shall have one hundred and eighty (180) days from the date of the relevant order documentation to use the Training Services and any Training Services not used within this time frame shall expire without right of refund. Any intellectual property which may be created by Quest while performing Training Services for Licensee, including, without limitation, ideas, know-how, techniques, enhancements or modifications to Quest's software source code or documentation, and any software scripts, shall be the property of Quest. Quest retains title and full ownership rights to all such intellectual property under the copyright laws of the United States, Canada or any other jurisdiction or under any federal, state, or foreign laws; however, Licensee shall be granted a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable, non-sublicensable license to use such intellectual property for its internal business purposes.

Token Hardware	The sole and exclusive warranty for the Tokens is as set forth in this paragraph. All other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed. Quest warrants that for a period of 12 (twelve) months (or, with regard to Go-3, Go-6, Go-7 and Slim Tokens, 36 (thirty six) months) following delivery by Quest (the “Warranty Period”) the tokens are free from faults in manufacture and materials where such faults materially affect the use of the Tokens (the “Token Warranty”). Quest shall not be liable for defects in Tokens which are notified by Licensee after expiration of the Warranty Period, nor for any minor cosmetic faults where use of the token is still possible. This limited warranty does not apply to malfunctions attributable to (i) extrinsic causes such as natural disasters including fire, smoke, water, earthquakes or lighting, (ii) electrical power fluctuations or failures, (iii) abuse, misuse, accident, alteration, neglect or unauthorized repair or installation, or (iv) storage outside of +10 °C to +30 °C with 85% relative humidity in non-condensing conditions. Quest does not warrant that the Tokens operate without interruption or without error. Customer’s exclusive remedy and Quest’s sole obligation for any breach of the Token Warranty shall be for Quest to replace defective Tokens within a reasonable time or, where replacement is not reasonably possible, to refund the fees paid for the non-confirming tokens. Customer must return to Quest the non-confirming Tokens no later than fourteen (14) days after its receipt of the replacement Tokens.
VAS, VSJ, VMX	These products have been re-branded to QAS, QSJ, and QMX respectively.
Virtual Server ID	Virtual Server ID means the specific computer on which the Software may be used.
vWorkspace Desktop Edition	The following restrictions apply to the vWorkspace Desktop Edition licenses. - Connections to Terminal Servers (Remote Desktop Session Hosts) are not permitted with Desktop Edition. - When licensed by concurrent user, the license quantity determines the maximum number of users that can be simultaneously connected to virtual desktops and blade PCs managed by vWorkspace. - When licensed by access device, the license quantity determines the number of access devices from which connections can be made to virtual desktops and blade PCs managed by vWorkspace. - Only available to Managed Service Providers: When licensed by virtual desktop, the license quantity determines the total number of virtual desktops and blade PCs that can be managed and connected by vWorkspace.
vWorkspace Enterprise	The following restrictions apply to the vWorkspace Enterprise licenses. - When licensed by concurrent user, the license quantity determines the maximum number of users that can be simultaneously connected to virtual desktops, Terminal Server (Remote Desktop Session Host) sessions and blade PCs managed by vWorkspace. - When licensed by access device, the license quantity determines the number of access devices from which connections can be made to virtual desktops, Terminal Server (Remote Desktop Session Host) sessions and blade PCs managed by vWorkspace. - Only available to Managed Service Providers: When licensed by virtual desktop, the license quantity determines the total number of virtual desktops, Terminal Server (Remote Desktop Session Host) sessions and blade PCs that can be managed and connected by vWorkspace.

vWorkspace EOP Xstream Edition	The following restrictions apply to the vWorkspace EOP Xstream Edition licenses: - The license quantity determines the maximum number of users that can be simultaneously connected to virtual desktops, Terminal Server (Remote Desktop Session Host) sessions and blade PCs through vWorkspace - Only the EOP Xstream feature may be used in the vWorkspace Connector software. Enhancements such as bi-directional audio, multimedia redirection, universal printing and USB device redirection are not included - Within the management console, the following features are not included: Creation and management of virtual desktops on Hyper-V or ESX hypervisors, MetaProfiles (User Profile Management), User Environment Configuration, CPU/Memory controls, Virtual IP addressing - These restrictions apply to licenses of EOP Xstream Edition even though the license code will identify itself as “Enterprise” in the License Manager within vWorkspace and all features will appear to be available. - All connections must be made from vWorkspace Connector software through the vWorkspace Connection Broker. vWorkspace “Quest Tools for the Managed Desktop” also known as “PNTools” component must be installed in all virtual desktops and blade PCs. vWorkspace Terminal Server Enhancements must be installed on all Terminal Servers or Remote Desktop Session Hosts.
vWorkspace IE6 Compatibility Edition	The following restrictions apply to the vWorkspace IE6 Compatibility Edition licenses: - The licenses may only be used by Concurrent Users connected through vWorkspace IE6 Compatibility Edition to Terminal Server sessions on Windows Server 2003 - IE6 Compatibility Edition may only be used to publish Internet Explorer 6. - The above restrictions apply regardless of the presence of additional functionality accessible from vWorkspace IE6 Compatibility Edition or the actual description of vWorkspace IE6 Compatibility Edition in the vWorkspace License Manager.

PART 3 - OTHER TERMS

Notwithstanding anything otherwise set forth in the Agreement, the terms and restrictions set forth in the Agreement shall not prevent or restrict Customer from exercising additional or different rights to any source software that may be contained in or provided with the Products in accordance with the applicable open source licenses.

Certain Products may include Java software from Oracle. The Java software components included in such Products are subject to the terms and conditions set forth in the Software License.txt and THIRDPARTYLICENSEREADME.txt files that are included in the Java software.

Customer is hereby notified that the Software may, with the user's consent, collect certain information from the Customer and transmit such information back to Quest or its sub-processors. Such information may include, statistics relating to how often the Software and tools are started and completed, the duration of use of the Software, performance metrics relating to the Software, and Software configuration settings. These usage statistics are gathered, transmitted, and analyzed for the purpose of improving the Software. In addition, Customer is hereby notified that (1) the Software may require a registration process whereby machine specific identifiers (that have been encrypted and are unique) and the username and user's email address are transmitted to Quest's licensing server to allow Quest to generate a unique key that is bound to the specific computer on which the Software may be used in order to limit the use of the Software to authorized systems owned by licensed customers, (2) the Software may communicate with Quest's patching server and allow Customer to download patches when they are available, to enable Customer to receive the newest enhancements promptly, (3) the Software may provide a 'Feedback' facility that allows Customer to send suggestions and ideas for improving the Software ("Feedback"), (4) the Software may include a mechanism to transmit information to Quest regarding unhandled exceptions to allow Quest's engineers to identify otherwise unreported issues to be addressed to improve the Software, and (5) the Software may make connections to Quest servers to verify license validity to ensure Quest Software is being operated only on authorized systems owned by licensed customers. By using the Software and opting-in, Customer hereby consents to the collection of such information by the Software, the transmission of such information to Quest or its sub-processors, and the use of such information by Quest or its sub-processors for the purposes specified here and any additional purposes specified in the Software at the time the user is prompted to opt-in.

This Product Guide may be amended from time to time by Quest, provided, however, that the terms and conditions of this Product Guide that are in existence as of the date Quest accepts an order placed by Licensee or Customer shall apply to the first purchase of specific Software referenced in such order. For clarification, all of Licensee's or Customer's licenses for specific Software, regardless of license date, will be governed by the version of the applicable Product Terms in effect on the date of the most recent license purchase.



Data Processing Addendum (formerly SaaS Addendum)

This Data Processing Addendum (“**DPA**”) is incorporated into the software agreement and/or services agreement (“**Agreement**”) between Provider and Customer for the purchase of certain SaaS Software licenses and/or Maintenance Services and/or professional services (for purposes of this DPA hereinafter referred to as “**Services**”) and forms part of a written (including in electronic form) contract between Provider and Customer. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

1. Definitions.

Capitalized terms not defined in context or in the Agreement shall have the meanings assigned to them below:

- a) “**Controller**” means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of Processing of Personal Data.
- b) “**Data Protection Law**” means all laws and regulations applicable to the Processing of Customer Personal Data under the Agreement, including, as applicable: (i) the California Consumer Privacy Act, as amended by the California Privacy Rights Act, and any binding regulations promulgated thereunder (“**CCPA**”), (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) (“**EU GDPR**” or “**GDPR**”), (iii) the Swiss Federal Act on Data Protection (“**FADP**”), (iv) the EU GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the “**UK GDPR**”) and (v) the UK Data Protection Act 2018; in each case, as updated, amended, or replaced from time to time.
- c) “**Data Subject**” means the identified or identifiable natural person to whom Customer Personal Data relates.
- d) “**Personal Data**” means information about an identified or identifiable natural person, or that otherwise constitutes “personal data”, “personal information”, “personally identifiable information” or similar terms as defined in Data Protection Laws.
- e) “**Personal Data Breach**” means an accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third party access to Customer Personal Data being Processed by Provider, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
- f) “**Processing**” refers to any operation that is performed on Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- g) “**Processor**” means a natural or legal person, public authority, agency, or other body that Processes Personal Data on behalf of the Controller.
- h) “**Standard Contractual Clauses**” or “**EU SCCs**” means the Standard Contractual Clauses approved by the European Commission in decision 2021/914.
- i) “**Sub-processor**” means Provider’s Affiliates and third parties engaged by Provider (or by Provider’s Affiliates) for the provision of any or all part(s) of the Services and who processes Customer Personal Data in accordance with this DPA.

2. Processing of Customer Personal Data.

Provider may Process Customer Personal Data under the Agreement as a Processor acting on behalf of Customer as Controller (or as subprocessor, as applicable, on behalf of Customer as Processor). Provider undertakes to Process Personal Data for the sole purpose of performing Provider’s obligations to Customer under and in accordance with: (i) this DPA and the Agreement, and (ii) Customer’s written instructions, or (iii) to comply with Provider’s obligations under applicable laws, subject to any notice requirements under Data Protection Laws. Details of the subject matter of the Processing, its duration, nature and purpose, and the type of Customer Personal Data, and Data Subjects, are as specified in the Agreement, or, if not specified, shall be as set out in Annex 1 of the Appendix to this DPA. Customer and Provider agree to comply with their respective obligations under Data Protection Laws applicable to the Personal Data that is Processed in connection with the Services. Customer has sole responsibility for complying with Data Protection Laws concerning the Processing of Customer Personal Data prior to disclosing, transferring, or otherwise making available, any Personal Data to Provider. Provider shall immediately inform Customer if, in its opinion, Customer’s instructions would be in breach of Data Protection Laws.

3. Security of Processing.

- a) **General Security Policies.** Provider will implement and maintain technical and organizational measures, procedures and practices, as appropriate to the nature of the Customer Personal Data, that are designed to protect the security, confidentiality, integrity and availability of Customer Personal Data, and that protect against Personal Data Breaches, in accordance with Provider’s security measures referenced in the Agreement and as further described at <https://www.quest.com/legal/security.aspx> (collectively “**Security Site**”) including the following:
 - Information Security Policy,
 - Statement of Technical and Organizational Measures,
 - Data Breach Response Policy, and
 - Privacy Policy.Provider may modify its Security Site so long as it does not materially decrease the overall level of protection provided.
- b) **Confidentiality.** Provider will protect Customer Personal Data in accordance with its confidentiality obligations as set forth in the Agreement. Provider will ensure that Provider personnel who Process Customer Personal Data have entered into written confidentiality agreements with Provider. Provider shall ensure that such confidentiality obligations survive the termination of employment for any such personnel. Provider will regularly train Provider personnel that have access to Customer Personal Data, in data security and data privacy requirements and principles.

4. Data Subject Requests.

Upon Customer's request, Provider will use commercially reasonable measures to assist Customer in complying with Customer's obligations under Data Protection Laws to respond to requests from individuals to exercise their rights under Data Protection Laws, provided that Customer cannot reasonably fulfill such requests independently (including through use of the Services). If Provider receives a Data Subject request in relation to Personal Data being processed hereunder, Provider will advise the Data Subject (where the Data Subject has provided information to identify the Customer) to redirect its request to Customer.

5. Audit Rights.

- a) **Provider Records Generally.** Provider will keep records of its Processing in compliance with Data Protection Laws and, upon Customer's written request, make available to Customer any records reasonably necessary to demonstrate compliance with Provider's obligations under this DPA and applicable Data Protection Laws.
- b) **Third-Party Compliance Program.** Provider will describe its third-party audit and certification programs (if any) and make summary copies of its audit reports (each, an **"Audit Report"**) available to Customer upon Customer's written request (subject to the confidentiality obligations set out in the Agreement). Customer may share a copy of Audit Reports with relevant government authorities as required.
- c) **Customer Audit.** Customer may, at Customer's expense, conduct an audit pursuant to a mutually agreed-upon plan that is consistent with the audit parameters below (an **"Audit"**). Customer may exercise its Audit rights (1) to the extent Provider's provision of an Audit Report does not provide sufficient information for Customer to verify either Provider's compliance with this DPA or compliance with Data Protection Laws; or (2) as necessary for Customer to respond to a government authority audit, or (3) in connection with a Personal Data Breach.

Each Audit must 1) be conducted by an independent third party that will have entered into a confidentiality agreement with Provider, (2) be limited in scope to matters reasonably required for Customer to assess Provider's compliance with this DPA and the parties' compliance with Data Protection Laws, (3) occur at a mutually agreed date and time and only during Provider's regular business hours, (4) occur no more than once annually (unless required under Data Protection Laws or in connection with a Personal Data Breach), (5) cover only facilities controlled by Provider, (6) restrict findings to Customer Personal Data only, and (7) treat any results as confidential information to the fullest extent permitted by Data Protection Laws.

6. Sub-processors and International Transfers.

- a) **Use of Sub-processors.** Customer generally authorizes Provider to engage Sub-processors in connection with the provisioning of the Services. Provider shall execute the appropriate written agreements with Sub-processors in accordance with the provisions of this DPA and the instructions herein between Customer and Provider. Provider is responsible for any breaches of this DPA to the extent caused by Sub-processors engaged by Provider.
- b) **Subprocessor List.** Provider maintains lists of Sub-processors per Software Product, including their functions and locations, available to Customer through registration at <https://support.quest.com/subprocessor>. At least thirty (30) days before authorizing any new Sub-processor to access Personal Data, Provider will update the list of Sub-processors and notify Customer through email upon registration.
- c) **Objection to New Sub-processors.** If Customer does not approve of a new Sub-processor, then Customer may terminate any subscription for the applicable SaaS Software by providing, before the end of the notice period, written notice of termination that includes an explanation of the grounds for non-approval.
- d) **International Transfers.** For the transfer of European and / or UK Personal Data to a Sub-processor located in a third country that does not provide adequate protection for Personal Data, Provider and the applicable Subprocessor have entered into the EU SCCs in order to provide appropriate safeguards for the transfer of such Personal Data in accordance with the European and UK Data Protection Laws.

7. Personal Data Breach Notification.

In addition to the obligations set forth in the Security Site, Provider will promptly notify Customer after becoming aware of a Personal Data Breach and provide reasonable information to assist Customer to meet Customer's obligation to report a Personal Data Breach as required under Data Protection Laws. Provider may provide such information in phases as it becomes available. Provider agrees to make good faith efforts to identify the cause of a Personal Data Breach and take steps as Provider deems necessary and reasonable to remediate the cause of the Personal Data Breach.

8. Deletion of Customer Personal Data.

Unless Customer notifies Provider at least thirty (30) days before the completion of the Services, following termination or expiration of the Agreement, Provider will delete all Customer Personal Data from Provider's systems. Provider will perform deletion in accordance with industry-standard secure deletion practices. Notwithstanding the foregoing, Provider may retain Customer Personal Data: (i) as required by Data Protection Laws or (ii) in accordance with its standard backup or record retention policies, provided that, in either case, Provider will (1) maintain the confidentiality of, and otherwise comply with, the applicable provisions of this DPA with respect to retained Customer Personal Data and (2) not further Process retained Customer Personal Data except for such purpose(s) and duration specified in such applicable Data Protection Laws.

9. Data Protection Impact Assessment.

Provider shall provide Customer with reasonable cooperation and assistance, as needed, to fulfil Customer's obligations under Data Protection Laws to carry out a data protection impact assessment or similar risk assessment related to Customer's use of the Services.

APPENDIX

This Appendix forms part of the DPA.

ANNEX I - Subject Matter and Details of Processing

A. LIST OF PARTIES

The Agreement between Customer as the controller and Provider as the Processor contains a description of all the required information, such as:

- name, address, contact person's name,
- position and contact details,
- activities relevant to the data transferred under these Clauses, and
- signature and date.

B. DESCRIPTION OF PROCESSING

1. Categories of Data Subjects whose personal data is processed

Unless provided otherwise by Customer, processed Personal Data relates to the following categories of Data Subjects:

- employees, contractors, business partners of Customer.

2. Categories of Personal Data processed

Customer determines the categories of data per its use of the Services. The Personal Data Processed typically concern the following categories of data:

- employment details (which may include company name and address, job title, grade, demographic and location data) relating to employees of Customer or other third parties whose personal information is provided by or on behalf of Customer;
- system information related to Customer systems, or systems provided to Provider by Customer and related to the Services purchased under the Agreement and required for the provisioning of Services (which may include user ID and password, computer and domain name, the IP address, GUID number or location of the computer or other device being used).

Customer Personal Data processed may concern past, present, and prospective, business partners or other individuals related to such business partners.

3. Sensitive data processed (if applicable)

Special categories of Personal Data (sensitive data) must not be provided by Customer unless identified on a case-by-case basis, and then only to the extent that the parties agree that such special categories of data are to be covered by the provision of the Services.

4. The frequency of the Processing (e. g. whether the data is processed on a one-off or continuous basis)

Continuously for the duration of the use of the Services.

5. Nature of the Processing

- Maintenance Services: Provider or its Subprocessors provide Maintenance Services when a Customer submits a support ticket because the Software is not available or not working as expected. Provider answers phone calls and perform basic troubleshooting, and handle support tickets in a tracking system.
- Professional services: Provider or its Subprocessors provide Services subject to the Services Order.
- SaaS Software: provision of the SaaS Software purchased by Customer.

6. Purpose(s) of the data transfer and further processing

Customer Personal Data Processed by Provider will be subject to the following basic Processing activities:

- Use of Personal Data to provide the Provider Services and where applicable, to provide access to and benefits of the SaaS Software pursuant to the Agreement and to provide Maintenance Services at Customer's request and in accordance with Customer's specific requirements, as appropriate, all in accordance with the instructions described below;
- Storage of Personal Data;
- Computer processing of Personal Data for data transmission;
- Continuous improvement of service features and functionalities provided as part of the Provider Services including automation, transaction processing, and machine learning;
- Execution of Customer's instructions in accordance with the Agreement.

The following additional Processing activities apply to any Personal Data stored in the SaaS Software:

- Storage of Personal Data in data centers (multi-tenant architecture);
- Back up and restoration of Customer Personal Data stored in the SaaS Software;
- Computer processing of Personal Data including data transmission, data retrieval, and data access;
- Communication to Customer's users;
- Release, development, and upload of any fixes or upgrades to the SaaS Software;

- f) Network access to permit Personal Data transfer;
- g) Monitoring, troubleshooting, and administering the underlying SaaS Software infrastructure and database;
- h) Security monitoring, network based intrusion detection, and penetration testing; and
- i) As necessary to respond to and address requests and demands of Data Subjects as appropriate and in accordance with the instructions described below.

Provider may use anonymized data (which is not Customer Personal Data but may be derived from Customer Personal Data) for purposes related to product improvement and development of new Provider Products and Services.

Further details of what the SaaS Software does, how it handles Personal Data, and the data storage location are indicated in the applicable Product Documentation and Security Guide.

7. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period.

The Personal Data shall be Processed during Customer's use of the Services pursuant to the Agreement and subject to Section 8 of this DPA.

8. For transfers to Sub-processors, also specify subject matter, nature and duration of the Processing

In respect of the EU SCCs, transfers to Sub-processors shall be on the same basis as set out in this DPA.

9. Instructions, Customer and Provider Commitments

Provider will follow written and documented instructions received from Customer with respect to Customer Personal Data unless in Provider's opinion such instructions (1) are legally prohibited or likely to result in a violation of applicable Data Protection Law, (2) require material changes to Provider's Services, and/or (3) are inconsistent with the terms of the Agreement or Provider's Documentation relating to the Services sold under the Agreement. In any such case, Provider shall immediately inform Customer of its inability to follow such instructions. Any description of Processing in the Agreement, this DPA, and any related Documentation of Provider shall be considered as instructions by Customer.

ANNEX II - Statement of Technical and Organizational Measures

Provider will use the appropriate technical and organizational measures that are set out on the Security Site (as defined in Section 3(a) of the DPA) in Provider's Processing of Customer Personal Data. Provider may modify the measures taken in protecting Customer Personal Data as long as it does not materially decrease the overall level of data protection provided for herein.



EMEA Software Transaction Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS PRODUCT. BY DOWNLOADING, INSTALLING OR USING THIS PRODUCT, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT DOWNLOAD, INSTALL OR USE THIS PRODUCT. IF YOU HAVE A SIGNED AGREEMENT WITH PROVIDER THAT IS SPECIFICALLY REFERENCED IN AN ORDER THAT IS EXECUTED BETWEEN YOU AND PROVIDER, THEN THAT SIGNED AGREEMENT WILL SUPERSEDE THIS AGREEMENT.

This EMEA Software Transaction Agreement (the “**Agreement**”) is made between you, the Customer (“**Customer**” or “**You**”) and the Provider, as defined below.

1. Definitions. Capitalized terms not defined in context shall have the meanings assigned to them below:

- (a) “**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.
- (b) “**Appliance**” means a computer hardware product upon which the Software is pre-installed and delivered.
- (c) “**Documentation**” means the then current user manuals and documentation that Provider makes available for the Software either through the electronic download of the Software or from the Support Site, and all copies of the foregoing.
- (d) “**Effective Date**” means the date that Customer accepts the Agreement.
- (e) “**eStore**” means Provider’s online Software ordering system located at <https://shop.quest.com/>.
- (f) “**License Type**” means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as indicated in the applicable Order and defined in the Product Guide.
- (g) “**Maintenance Services**” means Provider’s then current maintenance and support offering specified in the applicable Order and made available to Customer as stated in the *Maintenance Services* Section below.
- (h) An “**Order**” is defined in Section 2 (Ordering).
- (i) “**Partner**” means a reseller or distributor that is under contract with Provider or another authorized party and is authorized via such contract to resell the Products and/or Maintenance Services.
- (j) “**Product(s)**” means the Software and/or Appliance(s) provided to Customer by Provider.
- (k) “**Product Guide**” means the document available at https://quest.com/docs/Product_Guide.pdf that contains the Product Terms.
- (l) “**Product Terms**” means the terms associated with each License Type and any other terms associated with an individual Product. The Product Terms for Products in a Signed Order or a Governing Quotation shall be as stated in the Signed Order or Governing Quotation. If no Product Terms are stated in the Signed Order or Governing Quotation, if the Order is placed with a purchase order (“**PO**”) only, if the Order is placed through the eStore, or if the Products are purchased from a Partner, then the Product Terms for such Products shall be as stated in the Product Guide as of the date of the Order or purchase.
- (m) “**Provider**” means Quest Software International Ltd., with its principal place of business located at City Gate Park, Mahon, Cork, Ireland. If an Order is placed through and approved by an Affiliate of Provider, then that Affiliate shall be the Provider under this Agreement.
- (n) “**Software**” means any and all software that is provided or made available to Customer under this Agreement as well as any new versions and releases of such software that are made available to Customer pursuant to this Agreement, and, where applicable, all copies of the foregoing. Software includes On-Premises Software and SaaS Software (as defined in *Appendix A Software License Terms*), along with software that is delivered on an Appliance.
- (o) “**Support Site**” means Provider’s website defining support, available at <https://support.quest.com/essentials/support-guide> and <https://support.quest.com>.
- (p) “**Use**” means Customer’s installation, deployment, access of or provision of access to, or operation of a Product.

2. Ordering. Customer may place an order for Products through (i) an ordering document signed by Customer and Provider (“**Signed Order**”), (ii) a Provider quotation referenced on a PO that states that it is governed exclusively by such quotation (“**Governing Quotation**”), (iii) an order placed through the eStore, (iv) an order placed through a Partner, or (v) a Customer PO submitted to Provider (each of which is referred to herein as an “**Order**”). Each Order shall be Customer’s irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order and each Order placed with Provider shall be subject to approval by Provider in writing or by performance. Customer may place Orders for professional services and training under Provider’s then current professional services terms.

3. Software License. Subject to Customer’s compliance with the terms of this Agreement, Provider grants to Customer, and Customer accepts from Provider, a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to Use the quantities of each item of Software licensed from Provider or a Partner within the parameters of the Product Terms associated with the applicable Software and License Type referenced in the Order and as described in *Appendix A* (a “**License**”). Except for MSP Licenses (as defined in *Appendix A*), Customer shall only Use the Software to support the internal business operations of itself and its worldwide Affiliates.

4. Restrictions. Customer may not, nor allow any third party to (a) Use the Software except as licensed hereunder, (b) reverse engineer, decompile, or otherwise seek to access the source code of the Software, except to the extent these restrictions are prohibited by applicable law and then only upon advance written notice to Provider, (c) copy, modify, create derivative works of, or remove proprietary notices from the Products or Documentation, (d) resell, sublicense, distribute or rent the Products or Documentation, (e) use the Software to provide a hosted or managed service to third parties, except for MSP Licenses, (f) use the Products or Documentation to create or enhance a competitive offering or



for any other purpose which is competitive to Provider, or (g) conduct security or vulnerability tests of the Software, interfere with its operation or circumvent any access, licensing or copying restrictions.

5. Proprietary Rights. Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) Provider, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to use Provider's trademarks or service marks, and (v) Provider reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

6. Title, Risk of Loss and Delivery. Provider, its Affiliates and/or its licensors own the title to all Software. Title and risk of loss to an Appliance shall pass from Provider to Customer upon shipment (unless the Appliance is rented, leased or loaned to Customer). Delivery of or access to Products shall be by electronic download, access credentials, or FCA (Provider's Dublin office) ICC Incoterms (2020).

7. Payment and Taxes. Customer agrees to pay to Provider (or, if applicable, Partner) the fees specified in each Order. Customer will be invoiced promptly following delivery of, or granting of access to, the Products or prior to the commencement of any renewal Maintenance Period or renewed Software term. Customer shall make all payments due to Provider in full within thirty (30) days from the date of each invoice or such other period (if any) stated in a Signed Order. Provider reserves the right to charge Customer a late penalty of 1.5% per month (or the maximum rate permitted by law, whichever is less) for any amounts payable to Provider by Customer that are not subject to a good faith dispute and that remain unpaid after the due date until such amount is paid. Amounts payable under this Agreement shall be paid in full without set-off or deduction by the Customer, and such amounts shall not be subject to any other limitations or exclusions, whether under this Agreement or otherwise arising in law.

The fees stated in an Order may not include taxes. If Provider is required to pay sales, use, property, GST, value-added, other taxes based on the purchase or use of Products or Maintenance Services provided under this Agreement, then such taxes shall be billed to and paid by Customer. This Section does not apply to taxes based on Provider's income.

8. Term and Termination.

(a) **Termination.** This Agreement or the Licenses granted hereunder may be terminated by (i) mutual written agreement of Provider and Customer, (ii) either party for a material breach of this Agreement by the other party that the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach ("**Breach**"), and (iii) Provider for a Breach by a Third Party User or MSP Client.

(b) **Effect of License Termination.** Upon termination of this Agreement or expiration or termination of a License for any reason, all rights granted to Customer for the applicable Software shall immediately cease and, Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) remove all copies, installations, and instances of the applicable Software from all Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users and Clients do the same, (iii) return the applicable Software to Provider together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iv) cease using the Maintenance Services associated with the applicable Software, (v) pay Provider or the applicable Partner all amounts due and payable up to the date of termination and shall not be entitled to any refund, and (vi) give Provider a written certification, within ten (10) days, that Customer, Third Party Users and Clients, as applicable, have complied with all of the foregoing obligations.

(c) **Survival.** Any provision of this Agreement that requires or contemplates continued performance after (i) termination of this Agreement, (ii) a termination or expiration of a License, or (iii) the expiration of a SaaS Term, is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration, including, without limitation, the *Restrictions, Export, Payment, Taxes, Effect of License Termination, Survival, Warranty Disclaimer, Indemnity, Limitation of Liability, Confidential Information, Compliance Verification, and General* sections of this Agreement. Termination of this Agreement or a License shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement.

9. Export. The Products and Maintenance Services are subject to the export control laws, rules, regulations, restrictions, sanctions and national security controls of the United States, Europe, and other applicable countries and regions ("**Export Controls**") and each party agrees to abide by the Export Controls. Customer hereby agrees to use the Products and Maintenance Services in accordance with the Export Controls, and shall not Use, export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the Use, export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations.

10. Maintenance Services. If ordered, Maintenance Services are provided in accordance with Provider's then current Support Guide available on Provider's Support Site, which describes the Maintenance Services, including support offering levels, severity levels, response times, and contact information. The time period during which Customer is entitled to receive Maintenance Services is a "**Maintenance Period**."

The Support Guide is incorporated in this Agreement and subject to change at Provider's discretion; however, Provider will not materially reduce the level of technical support services provided during a paid support period. As part of the Maintenance Services Provider will (i) make available new releases and corrections of the Software when Provider makes them generally available to its supported customers at no additional license fee, and (ii) provide technical support for issues that are demonstrable in the currently supported release(s) of the Software. Maintenance Services fees are due and payable annually in advance of a support period. Except for non-perpetual Licenses (for which the Maintenance Period is equal to the duration of the License) and unless otherwise stated in the Order, each License includes an initial Maintenance Period beginning on the date of the initial delivery of the Software following an Order and lasting for twelve (12) months thereafter.

The Maintenance Period for perpetual Licenses will automatically renew for additional terms of 12 months, at the prices stated on a Maintenance Services renewal Quotation provided by Provider, unless the renewal has been cancelled by either party with at least sixty (60) days prior written notice (email is sufficient). Maintenance Services must be ordered for all copies of each licensed Product and may not be purchased for a subset of licenses of a Product only. The procedure and fees for reinstating Maintenance Services for Software after it has lapsed is posted on the Support Site.



11. Warranties and Remedies. Except as otherwise set forth in Section *Country Unique Terms* Provider warrants as follows:

- (a) **Software Warranty and Remedies.** Provider warrants that, during the applicable Warranty Period, the operation of the Software, as provided by Provider, will substantially conform to its Documentation (the “**Software Warranty**”). For On-Premises Software, the warranty shall be for ninety (90) days following the initial delivery of the Software pursuant to an Order; and for SaaS Software shall be the duration of the SaaS Term (the “**Warranty Period**”). Provided Customer notifies Provider of any breach of the foregoing warranty within the Warranty Period, Provider shall at its option (i) correct or provide a workaround for reproducible errors in the Software that caused the breach within a reasonable time considering the severity of the error and its effect on Customer or (ii) refund the license fees paid for the applicable nonconforming On-Premises Software in exchange for a return of such nonconforming On-Premises Software or provide a credit of the fees allocable to the period during which the SaaS Software was not operating in substantial conformance with the applicable Documentation. These are Customer's sole and exclusive remedies and Provider's sole obligation for any such breach of the Software Warranty.
- (b) **Appliance Warranties.** Appliances are warranted in accordance with the warranty document delivered with the Appliance and/or included on the hardware manufacturers' website.
- (c) **Warranty Exclusions.** The warranties set forth in this section shall not apply to any non-conformance (i) that Provider cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the applicable Product or by using the Product in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Product by anyone other than Provider.
- (d) **Warranty Disclaimer.** The express warranties and remedies set forth in this section or in a Signed Order or Governing Quotation are the only warranties and remedies provided by Provider 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, interoperability, fitness for any particular purpose, non-infringement, satisfactory quality, and any warranties arising from usage of trade or course of dealing or performance. Provider does not warrant uninterrupted or error-free operation of the Products.
- (e) **High-Risk Disclaimer.** The Products are not fault-tolerant and are not designed or intended for use and may not be used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life support machines, or any other potentially life critical uses (collectively, “**High Risk Activities**”). Provider shall not be liable for any claims by Customer in respect of or which relate directly or indirectly to High Risk Activities.

12. Indemnity.

- (a) **Provider Software Indemnity.** Provider shall indemnify Customer from any claim, suit, action, proceeding brought by a third party (a “**Third Party Claim**”) to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which Provider has authorized Customer to use the Software, including the country to which the Software is delivered to Customer, or misappropriates a trade secret in such country. Provider shall have no obligation hereunder to indemnify Customer as described under this section against any Third Party Claim resulting from (1) Use of the Software other than as authorized by this Agreement, a Signed Order, or a Governing Quotation; (2) a modification of the Software other than by Provider, (3) Customer's Use of any release of the Software after Provider has provided a non-infringing update at no charge, or (4) Use of the Software in conjunction with other products, services, or data not supplied by Provider if the infringement would not have occurred but for such use. If, as a result of a Third Party Claim or an injunction, Customer must stop using any Software (the “**Infringing Software**”), Provider shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the License for the Infringing Software and (A) for On-Premises Software, accept the return of the Infringing Software and refund the license fee paid for the Infringing Software, prorated over a sixty (60) month period from the date of initial delivery of such Software following an Order, or (B) for SaaS Software, discontinue Customer's right to access and use the Infringing Software and refund the unused prorated portion of any license fees pre-paid by Customer for such Software. This section states Provider's entire liability and its sole and exclusive indemnification obligations with respect to a Third Party Claim and Infringing Software.
- (b) **Export Compliance Indemnity.** Either party shall indemnify the other from and against a Third Party Claim arising from their own party's violation of section *Export*.
- (c) **Customer Data Indemnity.** Customer shall indemnify Provider against a Third Party Claim arising from its Customer Data responsibilities under *Appendix A Software as a Service*.
- (d) **Indemnification Obligations.** Indemnification for a Third Party Claim shall exclusively consist of the following: indemnifying party shall (1) defend or settle the Third Party Claim at its own expense, (2) pay any judgments finally awarded against indemnified party under a Third Party Claim or any amounts assessed against indemnified party in any fines or settlements of a Third Party Claim, and (3) reimburse indemnified party for the reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, it necessarily incurs in responding to the Third Party Claim. Indemnifying party's obligations are conditioned upon indemnified party (i) giving prompt written notice of the Third Party Claim to the indemnifying party, (ii) permitting indemnifying party to retain sole control of the investigation, defense or settlement of the Third Party Claim as long as such settlement shall not include a financial obligation on or admission of liability by indemnified party, and (iii) providing indemnifying party with cooperation and assistance as indemnifying party may reasonably request in connection with the Third Party Claim.

13. Limitation of Liability. Except as otherwise set forth in Section *Country Unique Terms* Customer or its Affiliates or Provider, its Affiliates or suppliers shall be liable as follows:

- (a) **Liability Cap.** Subject to Section 13(b) and (c), the maximum aggregate and cumulative liability of either party under this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed (i) the fees paid and/or owed (as applicable) by Customer for the Products that are the subject of the breach; or (ii) for Maintenance Services or a Product subject to recurring fees, the liability shall not exceed the annualized amount paid and/or owed (as applicable) for such Maintenance Service or Product during the twelve (12) months immediately preceding the breach.



(b) **Exclusion of Damages.** Subject to Section 13(c), neither party shall be liable for any (i) loss of income, revenue, business, contracts or actual or anticipated profits; (ii) loss of anticipated savings; (iii) loss of goodwill or reputation; (iv) loss of, damage to or corruption of data; (v) recovery of data or programs; (vi) indirect, incidental, special or consequential loss or damage of any kind; howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise.

(c) **Exclusions from Liability Cap.** Nothing in this Agreement shall exclude or limit a party's liability for (i) any amounts due and payable to Provider under this Agreement; (ii) any breach of the *Restrictions* section; (iii) indemnity obligations under the *Indemnity* section; (iv) death or personal injury resulting from negligence; (v) willful misconduct or fraud; and (vi) any liability to the extent liability may not be excluded or limited as a matter of applicable law.

14. Confidential Information

(a) **Definition.** "**Confidential Information**" means information or materials disclosed by one party ("**Disclosing Party**") to the other party ("**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, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement.

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the Effective Date; (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (iv) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information.

(b) **Obligations.** The Receiving Party shall (i) not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in subsection (c) below, and (ii) protect the Disclosing Party's 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 promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this section shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c) **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the "**Representatives**"), but only to those Representatives that (i) have a "need to know" in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement. Additionally, it shall not be a breach of this section for the Receiving Party to disclose the Disclosing Party's 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.

15. Data Protection.

(a) **Data Privacy.** Each party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement, such as but not limited to, the California Consumer Privacy Act as amended by the California Privacy Rights Act, the General Data Protection Regulation, or the UK Data Protection Act, including any implementation act(s) related thereto, or any other applicable laws regulations and other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data ("**Privacy Laws**"). Each party is responsible for obtaining any necessary authorizations and consents prior to disclosing personal data to the other party or to any third party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either party may use personal data consisting of ordinary business contact data (e.g., name, phone number, email address, etc.) in its capacity as a controller strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the party's business relationship and performance of their obligations under this Agreement.

(b) **General Security.** Details on Provider's information security practices, data incident response policies, technical and organizational measures, and software development security practices are available at: <https://www.quest.com/legal/security.aspx> (collectively "**Security Site**"). Customer agrees that Provider may modify its Security Site so long as it does not materially decrease the overall level of protection provided.

16. License Verification.

(a) **Reporting.** Customer shall maintain and use systems and procedures that allow Customer to accurately and completely track, document, and report Customer's Use of each Product in the quantities and versions used in compliance with the Product Terms and this Agreement and allow Provider to audit the same (an "**Audit**"). Audits may be performed by Provider or its designated agents. Provider shall provide at least ten (10) days prior written notice to Customer before the start of an Audit and will conduct the Audit during normal business hours. Customer shall provide and will require its Clients and Third Party Users to provide, their full cooperation and assistance with such audit and provide access to the applicable records and computers.

(b) **Confidentiality.** Provider agrees that any Customer information gathered during the performance of an audit shall be Customer's Confidential Information under this Agreement. Customer agrees that it will not require any further confidentiality or nondisclosure agreements



to be executed by Provider or its designated agents in connection with the Audit. Prior to the Audit, Provider shall ensure that its agents are subject to confidentiality obligations at least as protective as those set forth herein.

(c) **Excess Use.** If an Audit indicates that Customer's installations, deployment, access of or provision of access to, or operation of each Product exceeds the quantity of licenses owned or is otherwise not in compliance with the scope of the license granted ("**Overuse**"), then Customer shall pay for all Overuse quantities at Provider's then current list price plus any interest on past due amounts and prior Maintenance Service fees. If the Overuse is more than five percent (5%) of Customer's license entitlements, then Customer shall reimburse Provider for Provider's reasonable cost of performing the Audit. Strict performance by Customer in accordance with this provision is an express condition to all or any licenses granted in this Agreement.

17. Country Unique Terms. If You purchased the Products in any country set forth in this section *Country Unique Terms*, this section sets forth specific provisions that apply thereto, as well as certain exceptions to specific terms and conditions in this Agreement, as detailed below:

(a) **Austria or Germany:** (A) Notwithstanding anything otherwise set forth in section **11.a) Software Warranty and Remedies** (i) Provider warrants that any Appliance provided by Provider substantially conforms to the Documentation applicable to such Appliances and the Warranty Period and remedies for On-Premises Software shall apply mutatis mutandis to such Appliance, however, in case of third party products after Customer first contacted the manufacturer and the elimination of the defect failed; (ii) in Subsection a) the Warranty Period for the Software Warranty for On-Premises Software shall be changed from ninety (90) days to one (1) year and with regard to the remedies, if a replacement or error correction definitely fails, Customer may exercise its statutory warranty rights (price reduction, rescission, damage compensation subject to the following section *Limitation of Liability*); and (iii) for non-perpetual licenses the provisions in Subsection a) as it applies to On-Premise Software shall apply mutatis mutandis, except that the Warranty Period shall be for the duration of the relevant license term and the right to terminate for cause replaces the right to rescind the Agreement. (B) The following replaces section **13. Limitation of Liability** in its entirety: (i) The Parties accept unlimited liability for acts or omissions based on willful misconduct or gross negligence. (ii) In case of slight negligence, the parties are only liable in case of a violation of essential contractual duties in a manner that endangers the contract's purpose or in case of a violation of duties that are indispensable for the proper execution of the contract. Liability for slight negligence is then limited to contract-typical, foreseeable damages. (iii) For claims according to the preceding section (ii) liability is further limited to the fees paid and/or owed (as applicable) by Customer for the Products that are the subject of the breach; for Maintenance Services or a Product subject to recurring fees, liability is further limited to the amount paid and/or owed (as applicable) for such Maintenance Service or Product during the twelve (12) months preceding. (iv) This applies to all claims for damages independent of their legal basis, including tort claims. (v) The following claims remain unaffected from the preceding limitations of liability: claims based on (1) the product liability act; (2) a breach of an express guarantee; (3) personal injury, or death; (4) any amounts due and payable to Provider under this Agreement; (5) any breach of the *Restrictions* section; and (6) indemnity obligations under the *Indemnity* section. (vi) These limitations of liability analogous to claims against Provider's Affiliates and suppliers and disbursements.

(b) **Italy or Switzerland:** The duration of the Warranty Period in section **11.a) Software Warranty and Remedies**, for the Software Warranty as it applies to On-Premises Software shall be changed from ninety (90) days to one (1) year.

(c) **France:** In addition to other rights and remedies for non-payment of invoices as specified in section **7. Payment and Taxes**, automatic collection fees, amounting to €40, may also be applied by Provider.

18. General.

(a) **Governing Law and Venue.** If Customer purchased the Products in Austria, Belgium, Denmark, England, Finland, France, Germany, Italy, Ireland, Luxembourg, Netherlands, Norway, Poland, Spain, Sweden or Switzerland then this Agreement shall be governed by and construed in accordance with the laws of such country. If Customer purchased the Products in any other country in Europe, the Middle East or Africa then the laws of England apply. Any conflict of laws principles that would require the application of laws of a different country are excluded. 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 jurisdiction of such courts. 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.

(b) **Assignment.** Neither party may, in whole or part, assign or transfer any of its rights or obligations under this Agreement or an Order, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise, without the prior written consent of the other party except (i) in connection with a merger, acquisition or sale of all or any portion of such party's assets or business, provided that such party's successor entity or third party assumes in writing all of such party's obligations under this Agreement and agrees in writing to be bound by this Agreement, (ii) that Provider may without the consent of Customer assign or transfer the Agreement to Provider's Affiliates, and (iii) if Customer purchased the Licenses in the European Economic Area (EEA) or Switzerland, that Customer may transfer to a third party (the "*Transferee*") its perpetual Licenses purchased, provided that Customer (1) ceases using the applicable Software, Documentation and associated Maintenance Services, (2) entirely removes all copies, installations, and instances of the applicable Software from all Customer computers and any other devices on which the Software was installed, and ensures that all applicable Third Party Users do the same and gives Provider upon request a written certification that Customer and its Third Party Users, as applicable, have complied with all of the foregoing obligations, (3) makes available to Transferee the license terms of this Agreement and the Order that apply to the transferred License, and (4) immediately notifies Provider in writing of the transfer and of the name and address of the Transferee. Any attempted assignment or transfer in violation of the foregoing, including but not limited to any transfer of any License that Customer acquired by any means other than under a license purchase contract (for example non-perpetual licenses or SaaS Software), or a transfer of Maintenance Services associated with the transferred Licenses, will be null and void. Notwithstanding the foregoing, the parties agree that Provider may use subcontractors to perform all or part of its obligations hereunder.

(c) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to affect the intent of the parties and the remaining provisions of this Agreement will 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 any failure or unenforceability thereof. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.



- (d) **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 an Order or in writing by either of the parties to the other in accordance with this section. Except as may be expressly permitted herein, notices may be delivered personally, sent to an email address specified by the receiving party, 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 in accordance with this paragraph. Provider may also send operational notices via the SaaS Software, Documentation, or make available on the Support Site.
- (e) **Disclosure of Customer Status.** Provider may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Provider in its marketing communications.
- (f) **Waiver.** 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 will not be deemed a waiver of any other provision or of such provision on any other occasion.
- (g) **Injunctive Relief.** 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 *Software License*, *Restrictions* or *Confidential Information* Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.
- (h) **Force Majeure.** Each party will 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, pandemics, and third party utility or Internet failures. For added certainty, this section shall not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.
- (i) **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor 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 will be construed in each case to mean "including, but not limited to."
- (j) **Legal Fees.** If any legal action is brought to enforce obligations related to payment, compliance verification, or a violation of intellectual property rights, the prevailing party shall be entitled to recover its reasonable attorneys' fees, full costs and other collection expenses, in addition to any other relief it may be awarded.
- (k) **Entire Agreement.** This Agreement contains the total agreement between the two parties regarding the subject matter covered herein and supersedes any other agreements, written, oral, expressed, or implied, including any confidentiality agreement between the parties. Unless there is a prevailing signed Agreement between the Parties, all Orders are governed solely and exclusively by this Agreement and any additional or varying terms stated on a Signed Order or a Governing Quotation. In the event of a conflict between the terms of this Agreement and the terms contained in a Signed Order or Governing Quotation, the terms of a Signed Order or Governing Quotation shall control. For all other Orders, the terms of this Agreement shall exclusively control. Neither this Agreement, nor an Order, may be modified or amended except by a written agreement executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order and Customer agrees that all additional or inconsistent terms that may be contained in any purchase order or other documentation submitted by Customer in connection with an Order are not applicable. Customer agrees that all of Customer's licenses for such Product, regardless of license date, will be governed by the version of the Software Transaction Agreement and applicable Product Terms in effect on the date of the most recent license purchase.



APPENDIX A: SOFTWARE LICENSE TERMS

(1) **On-Premises Software.** If Software is delivered to Customer for (i) Customer's installation and use on its own equipment or (ii) pre-installed by Provider on an Appliance ("**On-Premises Software**"), the License term shall be perpetual (unless otherwise stated on the Order) and shall also include the right to (i) make a reasonable number of additional copies of the On-Premises Software to be used solely for non-productive archival or passive disaster recovery purposes, provided such copies are kept in a secure location and are not used for production purposes unless the associated primary copy of the On-Premises Software is no longer being used for production purposes, and (ii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their Use of the On-Premises Software. Each License for On-Premises Software shall only be installed by Customer in the country in which the On-Premises Software is initially delivered to Customer.

(2) **Software as a Service.** If an Order provides Customer with a right to access and use Software installed on equipment hosted by Provider or its suppliers ("**SaaS Software**"), the License for such SaaS Software shall be granted for the duration of the term stated in the Order (the "**SaaS Term**"), as such SaaS Term may be extended by automatic or agreed upon renewals. If any item of On-Premises Software to be installed on Customer's equipment is provided in connection with SaaS Software, the License duration for such Software shall be for the corresponding SaaS Term, and Customer shall promptly install any updates to such Software as may be provided by Provider. "**SaaS Environment**" means the systems to which Customer is provided access in connection with its use of the SaaS Software.

(a) **Availability.** Provider will make commercially reasonable efforts to make the SaaS Software available twenty-four hours a day, seven days a week except for scheduled maintenance, the installation of updates, those factors that are beyond the reasonable control of Provider, Customer's failure to meet any minimum system requirements communicated to Customer by Provider, and any breach of this Agreement by Customer that impacts the availability of the SaaS Software. Provider shall provide reasonable advance notice to Customer of any scheduled maintenance. Provider can limit or suspend Customer's access to the SaaS Software if it is sufficiently probable that the continued use of the SaaS Software may result in harm to the SaaS Software, other Provider customers, or the rights of third parties in such a way that immediate action is required to avoid damages or Customer is in breach of the Agreement. If circumstances allow and if reasonably practicable, Provider will give Customer notice so that Customer may seek to promptly avoid the issue and avoid suspension.

(b) **Customer Data.** Customer represents and warrants that it (i) has all rights necessary to use any data, content or materials that Customer (including its users) submits or includes from third-party platforms to the SaaS Environment ("**Customer Data**") without violating third-party intellectual property, privacy or other rights and grants Provider the right to access, transmit, process and use Customer Data to provide and support the SaaS Software as set out in the Agreement, and (ii) will use industry-standard measures to avoid introducing viruses, malicious code or similar harmful materials into the SaaS Environment. Between the parties, Customer is responsible for the content and accuracy of Customer Data.

(c) **Data Processing.** If Provider processes any personal data on behalf of the Customer through the Customer's use of the SaaS Software then Provider's standard data processing addendum at <https://www.quest.com/legal/dpa.aspx>, or such separate terms as mutually agreed in writing, will apply to such data processing and will become a part of this Agreement. For clarity, any data protection or security agreement relating to data processed under this Agreement will always be considered a part of this Agreement and not a stand-alone agreement.

(d) **Cooperation.** Customer shall cooperate with Provider's reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this *Software as a Service* section.

(3) **MSP License.** If an Order indicates that Software is to be used by Customer as a managed service provider, Customer shall be granted a License to use such Software and the associated Documentation to provide Management Services (an "**MSP License**"). "**Management Services**" include, without limitation, application, operating system, and database implementation, performance tuning, and maintenance services provided by Customer to its customers (each, a "**Client**" or an "**MSP Client**"). If an Order indicates that an MSP License will be used to support a specific Client, Customer may not Use the MSP License to support any Client other than the Client named on the Order.

(a) **Customer Responsibilities.** Customer shall ensure that (i) each Client only uses the Software and Documentation as part of the Management Services provided to it by Customer, (ii) such use is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Restrictions* and *Export* sections of this Agreement, and the applicable Order, and (iii) each Client cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent. Customer agrees that the acts and omissions of its Clients in connection with their use of the Software and Documentation shall be deemed the acts and omissions of Customer.

(b) **Client Support.** Customer shall be solely responsible for supporting its Client, including but not limited to, conducting all activities required to install the Software and for providing any training to its Client and any system integrators regarding the installation, use and operation of the Software. Customer will provide Management Services to its Client in a manner that does not degrade the goodwill and reputation of Provider or the Software and will not undertake any action that would impair or disrupt Provider's relationship with its customers or potential customers. Customer will make no representations or warranties related to the Software in excess of Provider's representations or warranties contained in this Agreement. At the conclusion of any Management Services engagement with a Client, Customer shall promptly remove any Software installed on its Client's computer equipment or require the Client to do the same.

(c) **Perpetual MSP License Assignment.** In the event Customer acquires a perpetual MSP License, Customer may assign the Software to its Client for the Client's internal use, provided that Customer obtains Provider's prior written consent for the assignment and the Client agrees to be bound by Provider's then current license agreement. Customer understands and agrees that Customer shall have no right to charge a fee to its Client(s) for such an assignment and that following such an assignment, Customer shall have no further rights to use the assigned Software, and the applicable License shall terminate in accordance with the terms of this Agreement. Any attempted transfer or assignment of the Software to a Client in violation of the foregoing shall be null and void.

(4) **Evaluation License.** If an Order indicates that Software is to be used by Customer for evaluation purposes, or if Software is otherwise obtained from Provider for evaluation purposes, Customer shall be granted a License to Use such Software and the associated Documentation solely for Customer's own non-production, internal evaluation purposes (an "**Evaluation License**"). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days from the date of delivery of the On-Premises Software or from the date that access is granted to the



SaaS Software, plus any extensions granted by Provider in writing (the "**Evaluation Period**"). There is no fee for an Evaluation License during the Evaluation Period, however, Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with Use beyond the scope permitted herein. Customer will only be granted one Evaluation License per release of any item of Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Evaluation Licenses are provided "AS IS" and that Provider does not provide warranties or Maintenance Services for Evaluation Licenses.

(5) **Freeware License.** If Customer downloads a freeware version of Software from a Provider website, the terms of Use of such Software shall be governed by the applicable Freeware definition set forth in the Product Guide (a "**Freeware License**"). Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Freeware Licenses are (i) provided "AS IS", (ii) Provider does not provide warranties or Maintenance Services for Freeware Licenses, and (iii) Freeware Licenses are for internal use only and may not be distributed to any third party.

(6) **Use by Third Parties.** Customer may allow its services vendors, outsourcing providers, and contractors (each, a "**Third Party User**") to Use the Software and Documentation, provided that Customer ensures that (i) the Third Party User's access to or use of the Software and Documentation is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Export* Section, and the applicable Order(s), (ii) the Third Party User cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent, and (iii) the Third Party User promptly removes any Software installed on its computer equipment upon the completion of the Third Party's need to access or use the Software as permitted by this Section. Customer agrees that the acts and omissions of its Third Party Users related to this Agreement, the Software, and Orders shall be deemed the acts and omissions of Customer.

(7) **Open Source.** Software distributed to Customer (if any) may include third-party open source software ("**Open Source**") as listed in the Documentation or by Provider upon request. If Customer elects to use the Open Source on a stand-alone basis, that use is subject to the applicable Open Source license and not this Agreement.

EMEA Services Agreement

This EMEA Services Agreement (the “**Agreement**”) is made between you, the customer (“**Customer**” or “**You**”) and the Provider, as defined below. Provider, through its employees, agents and contractors, shall perform the consulting and/or training services described in the Services Order Form, Provider Quotation or Statement of Work (each a Services Order and referred to herein as an “**SO**”) into which this Agreement is hereby incorporated. If You are purchasing the Services (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 Services 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) “**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.
- (b) “**Activities**” are consulting and/or training services to be performed by Provider pursuant to a Time and Materials SO.
- (c) A “**Description of Services**” or “**Services Offering Description**” is a document incorporated into the SO by reference which contains a description of the planned Activities for a Time and Materials SO or the Project Deliverables for a Fixed Price SO (a “**DOS**” or “**SOD**”, respectively). Unless the SOD is fully set out in the SO, the applicable SOD is as posted at <http://quest.com/legal/service-offering-descriptions.aspx> on the date the SO is executed by Customer.
- (d) A “**Day**” is seven and half (7.5) hours.
- (e) “**Documentation**” means the user manuals and documentation that Provider delivers with the Products.
- (f) “**End Customer**” means the entity identified as the “End User” or “End Customer” on the SO.
- (g) An “**Engagement**” is a set of consecutive Workdays during which Provider shall perform Services at End Customer’s site.
- (h) A “**Fixed Price SO**” is an SO in which Project Deliverables are provided for a set fee, regardless of the Time required to perform or create them.
- (i) “**Hardware**” means any hardware identified in the SO that has been purchased by Customer from Provider under a separate agreement.
- (j) “**Prepaid Time**” is Time for which Customer is invoiced immediately following the full execution of the SO.
- (k) “**Products**” means the Software and/or Hardware identified in an SO or DOS and licensed or purchased by Customer under a separate agreement.
- (l) A “**Project Deliverable**” is a discrete task to be completed or item to be created as part of a Fixed Price SO.
- (m) “**Provider**” means either (i) Quest Software International Ltd, with its principal place of business located at City Gate Park, Mahon, Cork, Ireland, or (ii) if an SO is placed with an Affiliate of Quest Software International Ltd, the Affiliate that executed or approved the SO.
- (n) “**Services**” means Activities or Project Deliverables.
- (o) “**Software**” means Provider’s proprietary software products identified in the SO or DOS and licensed by Customer under a separate agreement.
- (p) “**Time**” is the quantity of Days or hours stated in a T&M SO.
- (q) A “**Time and Materials SO**” or “**T&M SO**” is an SO in which Activities are provided on a per-hour or per-Day basis.
- (r) A “**Workday**” is a calendar day during which Provider performs Services.

2. Process.

- (a) **Purchase Orders.** Except as otherwise stated in the SO, Provider shall process the SO upon receipt of the executed SO and/or Customer’s purchase order (“**PO**”) for the Services 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 Provider’s receipt of the SO executed by Customer and/or Customer’s PO. The Services shall start upon mutual agreement of the parties. Provider shall be liable to Customer for the acts and omissions of its contractors (if any) that perform Services under the SO.
- (c) **Rescheduling.** Unless stated otherwise in the SO, if Customer cancels or reschedules an Engagement less than ten (10) days before it is scheduled to begin, it shall (a) for a T&M SO, pay Provider a cancellation fee equal to three (3) Days of Activities or forfeit three (3) Prepaid Days of Activities (as applicable) or (b) for a Fixed Price SO, pay Provider for three (3) Days at Provider’s then standard rate per Day. In addition, Customer shall reimburse Provider for any non-refundable travel expenses Provider incurs as a result of the cancellation or rescheduling. Customer agrees that, except for factors beyond its reasonable control or if the Services planned for an Engagement have been completed, it shall not cancel an Engagement once it has begun. If Customer cancels the Engagement under a T&M SO once it has begun, for reasons other than those stated in the preceding sentence, it shall pay Provider 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 Provider with the assistance required to perform the Activities or complete the Project Deliverables.
- Provides Provider 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 or complete the Project Deliverables.
- Provides project team members with suitable business expertise, technical expertise and decision-making authority to ensure efficient project progress.
- On request, provides the Provider project manager with applicable documentation of current business practices applicable to the Services to be performed under the SO.

(e) **Completion of Project Deliverables.** This Section *Completion of Project Deliverables* applies only to Fixed Price SO's. Following the completion and delivery of the Project Deliverable(s), Provider shall notify Customer in writing that the Project Deliverable(s) have been performed or created and delivered. During the ten (10) day period following the delivery of the Project Deliverable(s) to Customer (the "**Completion Acknowledgement Period**"), if Customer determines that the Project Deliverable(s) have not been completed in substantial conformance with their descriptions in the SO, it shall so notify Provider and describe each non-conformance ("**Notice of Non-Conformance**"). Upon Provider's receipt of a Notice of Non-Conformance, Provider shall re-perform or re-create the non-conforming Project Deliverables and a new Completion Acknowledgment Period will begin upon delivery of the revised Project Deliverables. If Customer does not provide a Notice of Non-Conformance before the day following the end of the Completion Acknowledgement Period, the Project Deliverables shall be deemed completed. Nothing in this Section *Completion of Project Deliverables* shall affect Customer's rights under the *Warranty* Section.

3. Time. A T&M SO will contain the Time that Provider has estimated in good faith to be required to perform the Activities described in the T&M SO ("**Estimated Time**"). Provider shall use commercially reasonable efforts to complete the Activities within the Estimated Time; however, Provider does not represent or warrant that it can or shall do so. Provider 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 T&M SO. Following Customer's email or equivalent approval, Provider may reallocate the Time stated in a T&M SO among the various resources stated in the fees table of the SO, provided such reallocation does not exceed the Estimated Time set forth therein. Activities shall use Prepaid Time, if any, before non-Prepaid Time.

4. Web Based Training

(a) **The Courses.** Each Web-based training course (each, a "**WBT Course**") must be started within twelve (12) months of the date it is purchased and completed within fourteen (14) days after it has been started. If the WBT Course is not started within twelve (12) months of the date it is purchased or is not completed within fourteen (14) days after it has been started, the right to take or complete the WBT Course will expire without right of refund. Each WBT Course may only be taken by one person.

(b) **Course Materials.** The materials provided during the WBT Course are Provider's Confidential Information (as defined in 8 below) and may not be copied, downloaded, "screen scraped", or otherwise duplicated without the express written consent of Provider.

(c) **Warranty.** In place of the warranty stated in the *Warranty* Section below, Provider warrants that each Course shall be presented in a technically correct manner and with professional diligence and skill. The foregoing warranty is valid during the WBT Course and for ten (10) days following the completion of the WBT Course (the "**WBT Warranty Period**"). All breaches of the foregoing warranty must be reported to Provider in writing during the WBT Warranty Period. Customer's exclusive remedy and Provider's sole obligation for any and all covered breaches of the foregoing warranty shall be for Provider, at its option, to allow Customer to apply the amount paid for the nonconforming WBT Course to another Course offered within nine (9) months of the non-conforming WBT Course or refund the fees paid for such WBT Course. For the purposes of this Section a "technically correct manner" means that the technical information provided during the WBT Course was substantially accurate and consistent with the applicable Documentation.

5. Fees.

(a) **Invoicing.** 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 Provider for the travel and living expenses reasonably incurred in the performance of each SO ("**Travel Expenses**"). Travel Expenses shall, unless stated otherwise in the SO, be subject to the following guidelines:

- Airline fares shall be economy class fares; however, whenever possible, Provider 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. Provider 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 Services, 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 prices in the SO are 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 full execution of the SO shall expire without the right of refund.

(d) **Normal Business Hours, Weekends, and Holidays.** Unless otherwise agreed by the parties, Services 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. Provider will only perform Services after Normal Business Hours if authorized to do so by Customer in writing.

6. Intellectual Property. During the performance of the Services by Provider, Provider 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 Provider. Provider 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 Provider's receipt of payment for the Services, the End Customer shall be granted a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable, non-sublicensable license to use for the benefit of itself and its Affiliates the IP for its and its Affiliates' internal business purposes. Notwithstanding the foregoing, nothing contained in this clause shall grant Provider any ownership, use, or distribution rights to Customer's Confidential Information other than as may be required to fulfill its obligations under this Agreement or the SO.

7. Warranty.

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

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

(c) **Warranty Disclaimer.** The express warranties and remedies set forth in this section are the only warranties and remedies provided by Provider 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.

8. Confidential Information.

(a) **Definition.** "**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, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement.

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the date that Customer accepts the Agreement (the "**Effective Date**"); (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; (iv) are protected by Provider in accordance with its obligations under the *Data Protection* Section below, or (v) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information.

(b) **Obligations.** The Receiving Party shall (i) not disclose or permit disclosure of the Disclosing Party's Confidential Information to any third party, except as permitted in subsection (c) below, (ii) only use the Disclosing Party's Confidential Information to exercise the rights granted to it under this Agreement, and (iii) protect the Disclosing Party's 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 promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this Section shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c) **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the "**Representatives**"), but only to those Representatives that (i) have a "need to know" in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement.

Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party's 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.

If You are the Customer but not the End Customer, You shall be permitted to provide to the End Customer Confidential Information of Provider for the purposes only of the SO and You agree that, prior to Provider providing Services 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 *Confidential Information* 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 Provider's Confidential Information that, if done or not done by You would be a breach of this Section *Confidential Information*.

9. Data Protection. Each party shall comply with all laws and regulations that are applicable to that party in relation to the processing of personal data under this Agreement such as the General Data Protection Regulation (EU) 2016/679 (the "**GDPR**"), including any implementation act(s) related hereto, and shall obtain all necessary authorizations and consents prior to disclosing any personal data to the other party. The terms "controller", "personal data" and "processing" used in this Section shall have the meaning set out in the GDPR. Either party may as a controller in the normal course of business use personal data (such as contact data and related information) for the sole purpose of performing its obligations under this Agreement. To the extent that Provider processes any personal data on behalf of Customer, Provider shall (i) only process the personal data as required to fulfill its obligations under this Agreement and in accordance with Customer's instructions as set out herein (any additional or alternate instructions to be agreed between the parties in writing) and Provider shall not be liable for any breach of this Section resulting from Provider compliance with Customer's instructions; (ii) implement appropriate technical and organizational measures to protect the personal data against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure or access; and (iii) promptly notify and reasonably assist Customer with any data subject access request relating to the personal data. Customer authorizes Provider to process the personal data for the purpose of complying with Provider's rights and obligations under this Agreement, including without limitation, international transfers of personal data to Provider's worldwide Affiliates and/or their respective agents or subcontractors, and/or to other relevant business partners, provided that (i) such transfer is required under or in connection with this Agreement and (ii) Provider ensures that, for any transfer of personal data to a country outside the EEA it has adequate agreements in place incorporating the EU standard contractual clauses for the transfer of personal data to processors established in third countries.

10. Limitation of Liability.

Except as otherwise set forth in Section *Country Unique Terms* the parties shall be liable as follows:

- (a) Subject to Section 10(b) and (c), the maximum aggregate and cumulative liability of either party under this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 125% of the fees paid and/or owed (as applicable) by Customer for the Services that are the subject of the breach.
- (b) Subject to Section 10(c), neither party shall be liable for any (i) loss of income, revenue, business, contracts or actual or anticipated profits; (ii) loss of anticipated savings; (iii) loss of goodwill or reputation; (iv) loss of, damage to or corruption of data; (v) recovery of data or programs; (vi) indirect, incidental, special or consequential loss or damage of any kind; howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise.
- (c) Nothing in this Agreement shall exclude or limit a party's liability for (i) Provider's express obligations under the *Infringement* section of this Agreement, (ii) Customer's breaches of the *Intellectual Property* section, (iii) death or personal injury resulting from negligence, (iv) fraud or willful misconduct; and (v) any liability to the extent liability may not be excluded or limited as a matter of law.
- (d) Provider's Affiliates and suppliers shall be beneficiaries of this *Limitation of Liability* Section.

11. Infringement.

Provider 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, Provider 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.

Provider's obligations under this Section *Infringement* are conditioned upon Customer (i) giving prompt written notice of the IP Claim to Provider; (ii) permitting Provider to retain sole control of the investigation, defense or settlement of the IP Claim, and (iii) providing Provider with such cooperation and assistance, as Provider may reasonably request, from time to time, in connection with the investigation, defense or settlement of the IP Claim.

Provider 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 Provider, (iii) based on use of the IP after Provider 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 Provider, 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 Provider, 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, Provider shall, at its expense and option either (i) obtain the right to continue using 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 Provider, and Customer's sole and exclusive remedy, with respect to an IP Claim.

12. Term and Termination.

- (a) **The Agreement.** Either party may terminate this Agreement for any reason, including, but not limited to the other party's uncured breach of the Agreement, with thirty (30) days written notice. If the Agreement is terminated, it shall remain in force for

any SOs which are not completed or are not separately terminated.

(b) **T&M SOs.** A T&M SO may be terminated (i) by Customer for convenience with ten (10) days written notice or (ii) by either party for a breach of the SO by the other party which, if capable of being cured, the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach. If a T&M SO is terminated, Customer shall (x) pay Provider for all fees and expenses incurred up to the effective date of termination and (y) shall not be entitled to a refund of any unused prepaid fees purchased by such SO unless the termination is for Provider's uncured breach.

(c) **Fixed Price SOs.** A Fixed Price SO may be terminated by either party for a breach of the Fixed Price SO by the other party which, if capable of being cured, the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach. If Provider terminates a Fixed Price SO as permitted by the preceding sentence, Customer shall pay Provider for all documented hours Provider has worked on uncompleted Project Deliverables at Provider's then current hourly rate.

(d) The Sections titled *Definitions*, *Intellectual Property*, *Warranty*, *Confidential Information*, *Limitation of Liability*, *Infringement*, *Fees* and *General* shall survive the termination of this Agreement.

13. Insurance. Provider 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.

14. Country Unique Terms. If you purchased the Services in any country set forth in this Section *Country Unique Terms*, this Section sets forth specific provisions that apply thereto, as well as certain exceptions to specific terms and conditions in this Agreement, as detailed below:

(a) **Austria or Germany:**

(aa) Notwithstanding anything otherwise set forth in **Section Warranty, Performance** (i) the warranty period for the Project Deliverables shall be changed from thirty (30) days to one (1) year; and (ii) with regard to the remedies, if a replacement or error correction definitely fails, Customer may exercise its statutory warranty rights (price reduction, rescission, damage compensation subject to the following section *Limitation of Liability*).

(bb) The following replaces **Section Limitation of Liability** in its entirety: (i) The Parties accept unlimited liability for acts or omissions based on willful misconduct or gross negligence. (ii) In case of slight negligence, the parties are only liable in case of a violation of essential contractual duties in a manner that endangers the contract's purpose or in case of a violation of duties that are indispensable for the proper execution of the contract. Liability for slight negligence is then limited to contract-typical, foreseeable damages. (iii) For claims according to the preceding section (ii) liability is further limited to 125% of the fees paid and/or owed (as applicable) by Customer for the Services that are the subject of the breach. (iv) This applies to all claims for damages independent of their legal basis, including tort claims. (v) The following claims remain unaffected from the preceding limitations of liability: claims based on (1) the product liability act; (2) a breach of an express guarantee; (3) death or personal injury resulting from negligence; (4) Provider's express obligations under the *Infringement* Section, and (5) Customer's breaches of the *Intellectual Property* section. (vi) These limitations of liability analogous to claims against Provider's Affiliates, employees and suppliers and disbursements.

(b) **France:** In addition to other rights and remedies for non-payment of invoices as specified in **Subsection Payment**, automatic collection fees, amounting to €40, may also be applied by Provider.

15. General.

(a) **Governing Law and Venue.** If You purchased the Services in Austria, Belgium, Denmark, England, France, Germany, Ireland, 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 Services in any other country in Europe, the Middle East or Africa then the laws of England 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 in the courts of the country whose laws apply to this Agreement. Each party hereby agrees to submit to the jurisdiction of such courts.

(b) **Assignment.** Neither party may assign or transfer any of its rights or obligations under this Agreement or the SO without the prior written consent of the other party except (i) in connection with a merger, acquisition or sale of all or any portion of such party's assets or business, provided that such party's successor entity or third party assumes in writing all of such party's obligations under this Agreement and agrees in writing to be bound by this Agreement, (ii) that Provider may without the consent of Customer assign or transfer the Agreement to Provider's Affiliates. Notwithstanding the foregoing, the parties agree that Provider may use subcontractors to perform all or part of its obligations hereunder.

(c) **Severability.** If any provision of this Agreement will be held by a court of competent jurisdiction to be contrary to law, such provision shall be enforced to the maximum extent permissible by law to effect the intent of the parties and the remaining provisions of this Agreement will 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.

(d) **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 the SO or in writing by either of the parties to the other in accordance with this Section. Except as may be expressly permitted herein, notices may 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 in accordance with this paragraph.

- (e) **Disclosure of Customer Status.** Provider may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Provider in its marketing communications.
- (f) **Waiver.** 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 will not be deemed a waiver of any other provision or of such provision on any other occasion.
- (g) **Injunctive Relief.** 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 *Confidential Information* Sections of this Agreement, the non-breaching party will be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.
- (h) **Force Majeure.** Each party will 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 added certainty, this Section shall not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.
- (i) **Headings.** 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."
- (j) **Independent Parties.** 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 and 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.
- (k) **Legal Fees.** If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and other collection expenses, in addition to any other relief it may be awarded.
- (l) **Entire Agreement.** This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter thereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement and the SO shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial or arbitral proceeding that may involve the Agreement. Each party acknowledges that in entering into the Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement. In those jurisdictions where an original (non-faxed, non-electronic, or non-scanned) copy of an agreement or an original (non-electronic) signature on agreements such as this Agreement or the SO is required by law or regulation, the parties hereby agree that, notwithstanding any such law or regulation, a faxed, electronic, or scanned copy of and a certified electronic signature on this Agreement or any SO shall be sufficient to create an enforceable and valid agreement. In the event of a conflict between the terms of this Agreement and the terms contained in the SO, the terms of a SO shall control. Neither this Agreement, nor the SO, may be modified or amended except by a writing executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or the SO.