

Quest Software Canada Inc. *Transaction Services Agreement*

This Transaction Services Agreement (the "**Agreement**") is made between Quest Software Canada Inc., with its principal place of business located at 260 King Street East, 4th Floor, Toronto, Ontario, Canada M5A 4L5 ("Quest") and you, the Customer. In consideration for the mutual promises and covenants contained herein, and such other good and valuable consideration, the sufficiency of which is hereby acknowledged, Quest and Customer hereby agree as follows:

Quest, through its employees, agents and contractors, shall perform the consulting and/or training services described in the Services Order Form, Quest Quotation, Statement of Work, or Services Order Confirmation (each a Services Order and referred to herein as an "**SO**") into which this Agreement is incorporated.

1. Definitions.

"**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.

"**Activities**" are consulting and/or training services to be performed by Quest on a "time and materials" basis (i.e., billed by the hour or Day).

A "**Description of Services**" or "**Services Offering Description**" is a document incorporated into an SO by reference which contains a description of the planned Activities or the Project Deliverables (if any) for the SO (each referred to herein as a "**DOS**").

A "**Day**" is eight (8) hours.

A "**Project Deliverable**" is a discrete task to be performed or item to be created which is expressly identified as a Project Deliverable in an SO and which is to be provided without regard to the Time required to perform or create it. For the avoidance of doubt, no task to be performed, or item to be created, which is not expressly identified as a Project Deliverable in an SO, shall be considered a Project Deliverable.

"**Documentation**" means the user manuals and documentation that Quest delivers with the Products.

An "**Engagement**" is a set of consecutive Workdays during which Quest shall perform Activities or Project Deliverables at Customer's site.

A "**Workday**" is a calendar day during which Quest performs Activities.

"**Hardware**" means any hardware identified in the SO purchased by Customer from Quest under a separate agreement.

A "**Prepaid Day**" is a Day for which Customer is invoiced immediately following the full execution of an SO.

"**Products**" means the Software and/or Hardware identified in an SO or DOS licensed or purchased by Customer under a separate agreement.

"**Software**" means Quest's proprietary software products identified in an SO or DOS and licensed by Customer under a separate agreement.

"**Time**" is the quantity of Days or hours stated in an SO.

2. Process.

(a) **Purchase Orders.** Except as otherwise stated in the SO, Quest shall process each SO upon receipt of Customer's purchase order ("**PO**") for the Activities or Project Deliverables (if any) and the estimated travel and living expenses, each as stated in the fees table of the SO. The estimated travel and living expenses stated in the SO shall be included as a separate line item on the PO. Quest, in its sole discretion, may waive the requirement for a PO if the Estimated Total Fees are over twenty-five thousand dollars (\$25,000.00) or if Customer confirms in writing that it does not issue PO's for services such as those being provided by the SO or for reimbursable travel and living expenses.

(b) **Resource Assignment.** The project team shall be assigned following Quest's receipt of the SO executed by Customer and Customer's PO (if required). The Activities or Project Deliverables shall start upon mutual agreement of the parties. Customer agrees that Quest may use certified channel partners or certified subcontractor consultants to perform Activities or Project Deliverables; however, Quest shall be liable to Customer for the acts and omissions of any such channel partner or subcontractor while such channel partner or subcontractor is performing Activities or Project Deliverables under the SO. With Customer's approval, Quest may also send a consultant-in-training, free of charge, for observation or training purposes.

(c) **Rescheduling.** Unless stated otherwise in the SO, if Customer cancels or reschedules an Engagement less than ten (10) days before it is scheduled to begin, it shall pay Quest a cancellation fee equal to three (3) Days of Activities or forfeit three (3) Prepaid Days of Activities (as applicable) and reimburse Quest for any non-refundable travel expenses Quest incurs as a result of

the cancellation or rescheduling. For an SO with Project Deliverables, the cancellation fee shall be equal to three (3) Days at Quest's then standard rate per Day.

Customer agrees that, except for factors beyond its reasonable control or if the Activities or Project Deliverables (if any) planned for an Engagement have been completed, it shall not cancel an Engagement. If Customer cancels the Engagement once it has begun, for reasons other than those stated in the preceding sentence, it shall pay Quest for the remaining Time in the Engagement or, if applicable, forfeit the applicable Prepaid Time.

(d) **Assumptions and Customer Obligations.** Customer agrees 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 by Customer within five (5) days of their delivery or Customer has not submitted a written request for adjustment, they shall be considered to be correct and accepted by Customer. In addition, Customer shall:

- Commit a technical resource, as may be required, to provide Quest with the assistance required to perform the Activities or complete the Project Deliverables.
- Provide Quest consultants with adequate and appropriate accommodations at Customer's site, as well as access to Customer's servers, systems and data, as may be required, to perform the Activities or complete the Project Deliverables.
- Provide project team members with suitable business expertise, technical expertise and decision-making authority to ensure efficient project progress.
- On request, provide the Quest project manager with applicable documentation of Customer's current business practices applicable to the Activities or Project Deliverables to be performed under the SO.

(e) **Completion of Project Deliverables.** *This Section 2(e) applies only to SO's containing Project Deliverables.* Following the completion and delivery of the Project Deliverable(s), Quest shall notify Customer in writing that the Project Deliverable(s) have been performed and delivered. During the ten (10) day period following the delivery of the Project Deliverable(s) to Customer (the "**Completion Acknowledgement Period**"), Customer may notify Quest that the Project Deliverable(s) have not been completed. If Customer does not so notify Quest, the Project Deliverables(s) shall be deemed completed on the day following the end of the Completion Acknowledgement Period. Nothing in this Section 2(e) shall affect Customer's rights under Section 6 (Warranty).

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

4. 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 taxes, travel and living expenses, if any, shall be billed as separate line items.

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

- Airline fares shall be coach or "Y" class fares; however, whenever possible, Quest shall purchase discounted airfares.
- Car rental shall be a midsize car or smaller. Mileage reimbursement for personal cars used, if any, shall not exceed the current Internal Revenue Service approved reimbursement per mile.
- Lodging shall be in standard hotel rooms, unless otherwise agreed to by Customer. Quest shall seek competitive lodging rates and shall attempt to take advantage of any special discounts, which may be negotiated by Customer at local hotels.
- Meals for Activities or Project Deliverables performed in North America, including travel days, shall be billed at sixty dollars (\$60.00) per day; no receipts for meals shall be provided.

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

(c) **Dates Valid.** The Unit Price in the SO is valid for Activities performed within one (1) year of the date of Customer's execution of the SO. Any Prepaid Days unused after twelve (12) months from the date of the 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, Activities shall be performed Monday through Friday 7:00 a.m. to 8:00 p.m. local time ("**Normal Business Hours**"), excluding weekends and holidays. Generally, a Workday is eight (8) hours and equivalent to a Day; however, upon mutual agreement by the parties, Quest may work more than eight (8) hours in a Workday and may work four (4) ten-hour Workdays in a calendar week. For billing purposes, a Workday on which Quest works ten (10) hours is equal to one and one quarter (1.25) Days; a week in which Quest works four (4) ten-hour Workdays is equal to five (5) Days.

Quest shall only perform Activities after Normal Business Hours or on weekend and holiday Workdays if authorized to do so by Customer in writing. Weekend and holiday Workdays must be scheduled at least fifteen (15) days in advance and be for a minimum of one (1) Day. If Activities are performed after Normal Business Hours or on a weekend or Quest holiday Workday, one and one half (1.5) hours shall be charged for each hour Quest performs Activities outside of Normal Business Hours, one and one half (1.5) Days shall be charged for each weekend Workday on which Activities are performed and two (2) Days shall be charged for each holiday Workday on which Activities are performed. If Activities using Prepaid Time are performed after Normal Business Hours or on a weekend or Quest holiday Workday, one and one half (1.5) hours shall be used from the estimated Time for each hour Quest performs Activities outside of Normal Business Hours, the estimated Time shall be used at the rate of one and one half (1.5) Days for each weekend Workday on which Activities are performed and two (2) Days for each holiday Workday on which Activities are performed.

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

6. Warranty.

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

(b) **Right to Perform.** Quest warrants that it has (i) all necessary licenses and permits required to perform the Activities and Project Deliverables, (ii) the right to use and provide the IP used during the performance of the Activities and the performance and creation of the Project Deliverables, and (iii) the right to convey any licenses granted hereunder. Customer's sole and exclusive remedy, and Quest's entire liability for any breach of the warranty in the preceding sentence, shall be for Quest to perform its obligations under Section 9.

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

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

Confidential Information shall not include information or materials that (a) were, on the Agreement Date, generally known to the public; (b) become generally known to the public after the Agreement Date other than as a result of the act or omission of the Receiving Party; (c) were known to the Receiving Party without an obligation of confidentiality prior to that party receiving the same from the Disclosing Party; (d) the Receiving Party lawfully received from a third party without that third party's breach of

agreement or obligation of trust; or (e) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information. Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Confidential Information, as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party, unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

The Receiving Party shall not (a) make Confidential Information available to any Affiliates, directors, officers, employees, consultants or representatives (collectively, the "**Representatives**") who do not have a "need to know" in order to carry out the purposes of this Agreement; (b) otherwise disclose any Confidential Information to any third party without the written consent of the Disclosing Party; or (c) use Confidential Information for any purpose other than as contemplated by this Agreement. The Receiving Party shall inform its Representatives of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use, as set forth in this Section, and shall disclose Confidential Information only to its Representatives who are legally bound to protect the Confidential Information under terms at least as restrictive as those provided herein. The Receiving Party agrees to protect Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall be liable for any disclosure or other breach in violation of this Agreement by any of its Representatives. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Confidential Information and shall cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights.

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

EXCEPT FOR (A) EITHER PARTY'S OBLIGATIONS UNDER THE *THIRD PARTY CLAIMS* SECTION, (B) EITHER PARTY'S BREACHES OF THE *NONDISCLOSURE* SECTION, AND (C) CUSTOMER'S BREACHES OF THE *INTELLECTUAL PROPERTY* OR *FEES* SECTIONS, EITHER PARTY'S CUMULATIVE LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, SHALL BE LIMITED TO NO GREATER THAN THE ESTIMATED TOTAL FEES SET FORTH ON THE SO OR OTHERWISE PAID FOR THE ACTIVITIES OR PROJECT DELIVERABLES DESCRIBED ON THE SO. NO ACTION MAY BE BROUGHT AGAINST EITHER PARTY LATER THAN ONE (1) YEAR FROM THE TERMINATION OF THIS AGREEMENT.

9. Third Party Claims

(a) **Infringement.** Quest shall, at its own expense, defend or settle any claim, suit, action, or proceeding brought against Customer by a third party to the extent it is based on an allegation that any IP provided hereunder directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which the IP is delivered to Customer, or misappropriates a trade secret in such country (an "**IP Claim**"). Additionally, Quest shall pay any judgments finally awarded against Customer under an IP Claim or any amounts assessed against Customer in any settlements of an IP Claim, and reasonable administrative costs or expenses, including, without limitation, reasonable attorneys' fees necessarily incurred by Customer in responding to the IP Claim. Quest's obligations under this Section 9(a) are conditioned upon Customer (i) giving prompt written notice of the IP Claim to Quest; (ii) permitting Quest to retain sole control of the investigation, defense or settlement of the IP Claim, and (iii) providing Quest with such cooperation and assistance, as Quest may reasonably request, from time to time, in connection with the investigation, defense or settlement of the IP Claim.

Quest shall have no obligation hereunder to defend Customer against any IP Claim (i) resulting from use of the IP other than as authorized in this Agreement, (ii) resulting from a modification of the IP other than by Quest, (iii) based on Customer's use of the IP after Quest recommends discontinuation because of possible or actual infringement, (iv) based on Customer's 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 to Customer, or (v) to the extent the IP Claim arises from, or is based on, the use of the IP with other products, services, or data not supplied by Quest, if the infringement would not have occurred but for such use. If Customer's use of the IP is enjoined as a result of an IP Claim, Quest shall, at its expense and option either (i) obtain for Customer 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 Quest, and Customer's sole and exclusive remedy, with respect to an IP Claim.

(b) **General.** At a party's request (the "**Defended Party**"), the other party (the "**Defending Party**") shall, at its own expense, defend or settle any claim, suit, action, or proceeding brought against the Defended Party by a third party which primarily alleges that the Defending Party's negligent or wrongful acts or omissions have directly harmed such third party ("**Claim**"). Additionally, the Defending Party shall pay any judgments on a Claim finally awarded by a court of competent jurisdiction or any settlements reached and the Defended Party's reasonable and necessary administrative expenses in responding to the Claim, including, but not limited to, reasonable attorneys' fees.

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

If a final judgment of the Claim allocates or attributes some or all of the liability, fault, or responsibility under the Claim to the Defended Party ("**Defended Party Liability**"), the Defended Party shall reimburse the Defending Party in proportion to the Defended Party Liability for (i) reasonable and necessary expenses the Defending Party incurred in defending or settling the Claim, including, but not limited to, reasonable attorneys' fees, and (ii) any amounts awarded to the third party in the settlement or final judgment. Additionally, the amount payable by the Defending Party to the Defended Party under the first paragraph of this Section 9(b) for the Defended Party's administrative expenses in handling the Claim shall be reduced in proportion to the Defended Party's Liability.

10. Term and Termination.

(a) This Agreement and the SO shall continue in effect until terminated by either party upon thirty (30) days prior written notice. Any such termination shall not relieve either party of their respective obligations under the SO in effect at the termination of the Agreement (which obligations shall remain in effect for the SO), except as otherwise mutually agreed, in writing, by the parties.

(b) Customer may terminate the SO for convenience upon ten (10) days prior written notice to Quest. Either party may terminate the SO for cause if the other party fails to perform any of its material obligations under this Agreement and fails to cure its breach within thirty (30) days after receiving written notice thereof from the non-defaulting party.

(c) Upon termination of this Agreement or the SO hereunder, Customer shall pay Quest for all costs and labor incurred, up to the date of termination, at Quest's standard professional services rates. Within fifteen (15) days after termination of this Agreement, each party shall certify, in writing, to the other party that all Confidential Information of the other party, received in connection with this Agreement, has been destroyed or returned. The Sections titled *DEFINITIONS, INTELLECTUAL PROPERTY, WARRANTY, NONDISCLOSURE, LIMITATION OF LIABILITY, THIRD PARTY CLAIMS, FEES AND GENERAL* shall survive the termination of this Agreement.

11. Notices. All notices required or permitted under this Agreement shall be sufficient if in writing and sent by first class mail, overnight mail, or courier, or transmitted by facsimile (if confirmed by mail), to the address set forth above, or to such address as designated by the party.

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

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

14. Insurance. Quest shall maintain in effect during the term of this Agreement the following insurance:

- (i) Worker's Compensation Insurance, as required by applicable law, and Employers' Liability Insurance with a limit of liability not less than \$1,000,000 combined single limit per occurrence for bodily injury by accident.
- (ii) Commercial General Liability Insurance (bodily injury and property damage) with contractual liability insurance. The limits of liability of such insurance shall not be less than \$1,000,000 combined single limit each event and \$2,000,000 general total limit.
- (iii) Automobile Bodily Injury and Liability Insurance, covering owned, non-owned and hired automobiles, the limits of which shall not be less than \$1,000,000 combined single limit per occurrence.

The above insurance shall endeavor to provide Customer with thirty (30) days written notice prior to the effective date of any cancellation in the insurance, except ten (10) days in the event of the non-payment of premium. Coverage shall be placed with insurers rated A- VI or better, as rated by A.M. Best's.

15. General.

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the Province of Ontario, Canada. The currency represented herein is in US dollars.

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

(c) All notices, requests, demands or communications required or permitted hereunder, including, but not limited to, billing contact information, shall be in writing, delivered personally, sent by facsimile or e-mail, or mailed by first class mail, postage prepaid, addressed to the legal department of the respective party or to such other address as shall be specified in writing by either of the parties to the other in accordance with this Section. All notices, requests, demands or communications shall be deemed effective upon personal delivery or four (4) days following deposit in the mail in accordance with this paragraph.

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

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

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

(g) Each party shall be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. Nothing in the foregoing shall be deemed to relieve Customer or its Affiliates of its obligation to pay fees owed under this Agreement.

(h) Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement shall not be construed either in 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 shall be construed in each case to mean "including, but not limited to."

(i) Each party is acting as an independent contractor under this Agreement and nothing contained herein shall be construed to create or imply any agency, joint venture, partnership, principal-agent or employment relationship between the parties. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees, agents or consultants of the other party.

This Agreement, the SO, and any properly executed addendum or exhibits (if any) thereto contains the entire agreement between the parties regarding the subject matter hereof and supersedes any and all other agreements and communications, written or oral, express or implied. The terms of this Agreement shall control over any conflicting terms and conditions contained in the SO, unless the terms or conditions in the SO are expressly intended to modify this Agreement.