

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.