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APJ Transaction Product Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS PRODUCT. BY DOWNLOADING, INSTALLING OR USING THIS PRODUCT, YOU INDICATE ACCEPTANCE OF 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. THIS AGREEMENT DOES NOT SUPERSEDE ANY OTHER WRITTEN AGREEMENT BETWEEN YOU AND THE SUPPLIER.

This APJ Transaction Product Agreement (the "Agreement") is made between you, the customer ("Customer" or "you") and the Supplier 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) "Documentation" means the user manuals and documentation that Supplier delivers with the Software, and all copies of the foregoing.

(c) "Hardware" means the hardware products purchased by Customer under this Agreement.

(d) "License Type" means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as may be indicated in the applicable Order.

(e) "Partner" means a reseller or distributor that is under contract with Supplier or another Partner and is authorized via the contract to resell the Products and/or Maintenance Services.

(f) "Product Guide" means the document located at http://www.quest.com/productguide that contains the Product Terms.

(g) "Product Terms" means the usage rights and other terms associated with each License Type or individual Product. The Product Terms for Software identified in an Order that is issued to Supplier shall be as stated in the Order, or, if no Product Terms are stated in the Order, then the Product Terms for such Software shall be as stated in the Product Guide as of the date of the Order. The Product Terms for Software ordered from a Partner shall be as stated in the Product Guide as of the date of the Order.

(h) "Products" means the Software Licenses and/or Hardware purchased by Customer under this Agreement.

(i) "Order" means the document by which Customer orders the Product(s) or, if Customer orders the Product(s) from Supplier's eStore (https://estore.quest.com), the process by which Customer orders the Product(s). Orders executed by Customer and Supplier shall be governed solely by the terms of this Agreement and the applicable Order. Orders placed with Supplier by Customer purchase order only and all Orders placed through a Partner shall be governed solely by the terms of this Agreement. Any conflicting or additional terms in or accompanying an Order will not be binding on Supplier unless Supplier accepts such terms in writing. Each Order shall be the Customer's irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order.

(j) "Supplier" means Quest Software International Ltd, with its principal place of business at Unit 5, Bluebell Business Park, Old Naas Road, Dublin 12, Ireland, or if you purchased the Products in People's Republic of China (excluding Hong Kong, S.A.R., Macau S.A.R. and Taiwan), Quest Software Beijing Co., Ltd with its principal place of business at Unit 1, Level 5, Tower C1, The Towers, Oriental Plaza, No. 1, East Chang An Ave, Dong Cheng District, Beijing 100738, P.R. China, or if you purchased the Products in Japan, Dell Software Japan, Ltd. with its principal place of business at Nittochi Nishi Shinjuku Building 13F 6-10-1 Nishi-Shinjuku, Shinjuku-ku,Tokyo 160-0023 Japan.

(k) "Software" means the object code version of the software that is delivered pursuant to an Order as well as any corrections, enhancements, and upgrades to such software that Supplier may provide to Customer pursuant to this Agreement, and all copies of the foregoing.

2. Software License.

(a) **Internal Use License.** Subject to the terms of this Agreement, Supplier grants to Customer, and Customer accepts from Supplier, a perpetual (unless otherwise set forth in an Order), non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to (i) install, execute, access, run, or otherwise use the quantities of each item of Software identified in the applicable Order within the parameters of the Product Terms associated with the applicable Software and License Type, (ii) make a reasonable number of additional copies of the 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 primary copy of the Software is not being used for production purposes and (iii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their use of the Software (collectively, "License"). Each License shall only be used by Customer in the country in which the Software is initially delivered to

Customer. Except for MSP Licenses (as defined below), Customer shall only use the Software to support the internal business operations of itself and its worldwide Affiliates.

(b) **MSP License.** If an MSP License is specifically identified in an Order, Customer shall be granted a License to use the Software identified in the Order and the associated Documentation as a managed service provider ("MSP") to provide software and systems management services, including, without limitation, application, operating system, and database implementation, performance tuning, and maintenance services ("Management Services"), for the benefit of the single named client stated in the Order ("Client"), pursuant to the terms of this Agreement and the MSP Use Terms in the Product Guide.

(c) **Evaluation License.** If an Order indicates that Software is to be used for evaluation purposes or if the Software is otherwise obtained from Supplier for evaluation purposes, Customer shall be granted a non-production License to use such Software and the associated Documentation solely for Customer's own internal evaluation purposes for an evaluation period of up to thirty (30) days from the date of delivery of the Software, plus any extensions granted by Supplier in writing (the "Evaluation Period"). There is no fee for Customer's use of the Software for non-production evaluation purposes 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 usage beyond the scope permitted herein. Customer's opportunity for a free evaluation of the Software is limited to one Evaluation Period per release of the Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that evaluation Software is provided "AS IS" and that Supplier does not provide a Warranty or Maintenance Services for evaluation Licenses.

(d) **Third Party Use.** If Customer contracts with a third party who performs Software implementation, configuration, consulting or outsourcing services ("Service Provider"), the Service Provider may use the Software and Documentation Licensed by Customer hereunder solely for purposes of providing such services to Customer, provided that (i) Customer ensures that the Service Provider uses the Software and Documentation in accordance with the terms of this Agreement and cooperates with Supplier during any compliance review that may be conducted by Supplier or its designated agent, (ii) the use of the Software and Documentation by the Service Provider will not violate the terms of the export restrictions set forth herein, and (iii) the Service Provider is not a Supplier's competitor. Customer shall be jointly and severally liable to Supplier for the acts and omissions of its Service Providers in connection with their permitted use of the Software and Documentation.

(e) **Freeware.** If a freeware version of Supplier software ("Freeware") is downloaded by Customer from a Supplier's website, the terms of such use shall be governed by the applicable Freeware definition set forth in the Product Guide.

3. Restrictions. Except to the extent expressly permitted by applicable law, and to the extent that Supplier is not permitted by such applicable law to exclude or limit the following rights, Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Products, Documentation or any part thereof. In addition, Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Products, Documentation or any part thereof, (ii) resell the Products or Documentation or use the Products or Documentation in any commercial time share arrangement, in connection with the operation of any nuclear facilities, or for purposes which are competitive to Supplier; or (iii) perform or fail to perform any act which would result in a misappropriation of Supplier's intellectual property rights in the Products or Documentation. Each permitted copy of the Software and Documentation made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Products may work in conjunction with third party products and Customer agrees to be responsible for ensuring that it is properly licensed to use such third party products. Notwithstanding anything otherwise set forth in this Agreement, the terms and restrictions set forth herein shall not prevent or restrict Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the applicable open source licenses. Customer may not use any license keys or other license access devices not provided by Supplier, including but not limited to "pirate keys", to install or access the Products.

4. Reservation of Rights and Ownership. Supplier reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement. Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) Supplier and/or its suppliers own the title, copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, and (iv) this Agreement does not grant Customer any rights to Supplier's trademarks or service marks.

5. Hardware. In the event Customer acquires Hardware under this Agreement, title to such Hardware shall pass to Customer upon shipment (unless such Hardware is rented, leased or loaned to Customer).

6. Payment. Customer agrees to pay to Supplier (or, if applicable, the Partner) the fees specified in each Order, including any applicable shipping fees. Customer will be invoiced promptly following delivery of the Products or prior to the commencement of any Renewal Maintenance Period and Customer shall make all payments due to Supplier in full within thirty (30) days from the date of each invoice or such other period (if any) stated in an Order signed by Supplier. Any amounts payable to Supplier by Customer that remain unpaid after the due date shall be subject to a late charge of 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.

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

8. Termination. This Agreement or Licenses granted hereunder may be terminated (i) by mutual agreement of Supplier and Customer, (ii) by Supplier, if Customer or a Service Provider commits a material breach of this Agreement and fails to cure such breach to Supplier's reasonable satisfaction within thirty (30) days following receipt of Supplier's notice thereof, or (iii) by Customer for any reason upon thirty (30) days written notice to Supplier. Upon termination of this Agreement or expiration or termination of a License for any reason, all rights granted to Customer for the applicable License(s) 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 Service Providers do the same, (iii) return the applicable Software to Supplier 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 License(s), (v) pay Supplier or the applicable Partner all amounts due and payable up to the date of termination, and (vi) give Supplier a written certification that Customer and its Service Providers, as applicable, have complied with all of the foregoing obligations. 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. Any provision of this Agreement that requires or contemplates execution after termination of this Agreement or expiration of a License is enforceable against the other party and their respective successors and assignees notwithstanding termination or expiration, including, without limitation, the "*Payment*," "*Taxes*," "Restrictions", "*Termination*," "*Warranty Disclaimer,"* "*Infringement*," "*Limitation of Liability*," "*Confidential Information*," "*Compliance Verification*," and "*General*" Sections of this Agreement.

9. Export. Customer acknowledges and agrees that the Products are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "Export Controls"), and agrees not to export or re-export, or allow the export or re-export of the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer hereby (i) represents that Customer is not an entity or person to which shipment of Products is prohibited by the Export Controls; and (ii) agrees that it shall not export, re-export or otherwise transfer the Products to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

10. Maintenance Services. During any Maintenance Period and for the applicable fees, Supplier shall make available to Customer the maintenance and support services for the Software as defined in this Section. The first Maintenance Period begins on the date of delivery of the Software following an Order and ends twelve (12) months thereafter unless otherwise set forth in the applicable Order (the "Initial Maintenance Period"). Following the Initial Maintenance Period, Maintenance Services shall automatically renew for additional terms of twelve (12) months (each, a "Renewal Maintenance Period") unless the renewal has been cancelled by either party giving written notice, by email or otherwise, to the other at least sixty (60) days prior to the first day of the applicable Renewal Maintenance Period. Cancellation of Maintenance Services will not terminate Customer's rights to continue to use the Software. Maintenance fees shall be due in advance of a Renewal Maintenance Period and shall be subject to the payment requirements set forth in this Agreement. The procedure for reinstating Maintenance Services after it has lapsed is posted at http://support.quest.com/Maintenance_Service.asp. Except as otherwise stated in the Product Guide, "Maintenance Services" shall be available via the Internet, e-mail, or telephone and shall mean the following:

(a) Supplier shall make available to Customer new versions and releases of the Software, including Software corrections, enhancements and upgrades, if and when Supplier makes them generally available without charge as part of Maintenance Services.

(b) Supplier shall respond to unlimited communications from Customer that report Software failures not previously reported to Supplier by Customer. Nothing in the foregoing shall operate to limit or restrict follow up communication by Customer regarding Software failures.

(c) Supplier shall respond to requests from Customer's technical coordinators for assistance with the operational/technical aspects of the Software unrelated to a Software failure; provided that Supplier shall have the right to limit such responses if Supplier reasonably determines that the volume of such non-error related requests for assistance is excessive or such requests are overly repetitive in nature.

(d) Customer shall have access to Supplier's Support Web site at http://support.quest.com ("SupportPortal").

(e) Maintenance Services are available during standard support hours ("Business Hours") as indicated on SupportPortal. In addition, Customer may purchase Business Critical Support (i.e. 24x7 Severity Level 1 support) for certain Software. The list of Software for which Business Critical Support is available and/or required is listed in the Global Support Guide on SupportPortal..

(f) During Business Hours, Supplier will respond within one (1) hour to a call from Customer which reports a critical Software condition (a "Severity Level 1 Problem"). Customer must use commercially reasonable efforts to provide Supplier with the necessary remote access to facilitate the identification and resolution of a Severity Level 1 Problem. Supplier's ability to identify and resolve a Severity Level 1 Problem may be delayed without such remote access.

(g) The Maintenance Services for those Software products that Supplier has obtained through an acquisition or merger may, for a period of time following the effective date of the acquisition or merger, be governed by terms other than those in this Section 10. The applicable different terms, if any, shall be stated on SupportPortal.

(h) For Hardware on which Total Privileged Access Management Software (**"TPAM"**) is delivered (as such Software may be renamed by Supplier in its sole discretion), if the Customer has purchased Maintenance Services for TPAM continuously since the purchase of licenses for TPAM, the Hardware Replacement Policy shall be included as part of Maintenance Services for TPAM.

The **"Hardware Replacement Policy"** is as follows: On the business day following Supplier's determination that replacement Hardware is required, Supplier will either ship a replacement for any Hardware (**"Replacement Hardware"**) or, at its discretion, ship a replacement part for the Hardware to be installed by Customer (**"Replacement Part"**). Any Replacement Parts shall be externally replaceable, not requiring the Hardware case to be opened. Replacement Hardware or Replacement Parts may be previously used, but shall not be of lesser capacity or specification than the Hardware or part being replaced. If Customer cannot permanently delete the data from the Hardware's data storage device and Customer's information security policy does not permit return of the Hardware with the sensitive data on it, Customer may remove any data storage device that does not require the Hardware case to be opened and return the Hardware without the device.

11. Warranties.

(a) **Software Warranty.** Supplier warrants that, for a period of thirty (30) days following the initial delivery of Software pursuant to an Order (the "Warranty Period"), (i) the media provided by Supplier, if any, on which the Software is recorded will be free from material defects in materials and workmanship under normal use, (ii) the operation of the Software, as provided by Supplier, will substantially conform to the Documentation applicable to such Software, and (iii) the Software as delivered by Supplier does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code designed by Supplier to allow unauthorized intrusion upon, disabling of, or erasure of the Software (however, the Software may contain a key limiting use of the Software to within the scope of License granted, and license keys issued by Supplier for temporary use are time-sensitive) (the "Warranties"). Customer must give written notice to Supplier of any breach of the Warranties no later than five days following the expiration of the Warranty Period.

Customer's exclusive remedies, and Supplier's sole obligations, for any such breach of these Warranties shall be as follows: (a) for the warranty in subsection (i), Supplier shall, at its expense, replace any defective media; (b) for the warranty in subsection (ii), Supplier shall correct or provide a workaround for reproducible errors in the Software that cause a breach of the warranty within a reasonable time considering the severity of the error and its effect on Customer, or, at Supplier's option, refund the license fees paid for the nonconforming Software upon return of such Software to Supplier and termination of the related License(s) hereunder; and (c) for the warranty in subsection (iii), Supplier shall provide a copy of the Software that is in conformance with such warranty.

The foregoing Warranties shall not apply to any non-conformance (i) that Supplier cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the Software or by using the Software in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Software by anyone other than Supplier.

(b) **Hardware Warranty.** Except for Hardware on which TPAM is delivered, Hardware shall be warranted in accordance with the warranty document delivered with the Hardware and/or included on the hardware manufacturers' website. 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.

For the period of one year from the date of delivery, Supplier warrants that the Hardware on which TPAM is delivered shall operate in a manner which allows TPAM to be used in substantial conformance with the Documentation. Customer's exclusive remedy, and Supplier's sole obligation, for any such breach of the foregoing warranty shall be as stated in the Hardware Replacement Policy.

(c) **Maintenance Services Warranty.** Supplier warrants that Maintenance Services will be performed with reasonable care and skill. Customer must report any breach of this warranty to Supplier in writing within thirty (30) days of performance of the Maintenance Services in question, and CUSTOMER'S EXCLUSIVE REMEDY AND SUPPLIER'S SOLE OBLIGATION FOR SUCH BREACH OF WARRANTY SHALL BE FOR SUPPLIER TO REPERFORM THE RELEVANT MAINTENANCE SERVICES.

(d) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY SUPPLIER 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, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. SUPPLIER DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

12. Infringement. Supplier will 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 the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which the Software is delivered to Customer, or misappropriates a trade secret in such country (a "Claim"). Additionally, Supplier shall pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees,

necessarily incurred by Customer in responding to the Claim. Supplier's obligations under this Section are conditioned upon Customer (i) giving prompt written notice of the Claim to Supplier; (ii) permitting Supplier to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing Supplier with such cooperation and assistance as Supplier may reasonably request from time to time in connection with the investigation, defense or settlement of the Claim. Supplier shall have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Software other than as authorized in this Agreement, (b) resulting from a modification of the Software other than by Supplier, or (c) based on Customer's use of the Software after Supplier recommends discontinuation because of possible or actual infringement, (d) based on Customer's use of a superseded or altered release of Software if the infringement would have been avoided by use of a current or unaltered release of the Software made available to Customer, or (e) to the extent the Claim arises from or is based on the use of the Software with other products, services, or data not supplied by Supplier if the infringement would not have occurred but for such use. If Customer's use of the Software is enjoined as a result of a Claim, Supplier shall, at its expense and option either (1) obtain for Customer the right to continue using the Software, (2) replace the Software with a functionally equivalent non-infringing product, (3) modify the Software so that it is non-infringing, or (4) accept the return of the infringing Software and refund the license fee paid for the infringing Software, pro-rated over a sixty (60) month period from the date of delivery of the Software following an Order . THIS SECTION STATES THE ENTIRE LIABILITY OF SUPPLIER, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO A CLAIM.

13. Limitation of Liability. EXCEPT FOR (A) ANY BREACH OF THE "*RESTRICTIONS*" OR "*CONFIDENTIAL INFORMATION*" SECTIONS OF THIS AGREEMENT, (B) AMOUNTS CONTAINED IN JUDGMENTS OR SETTLEMENTS WHICH SUPPLIER IS LIABLE TO PAY ON BEHALF OF CUSTOMER UNDER THE "*INFRINGEMENT*" SECTION OF THIS AGREEMENT, OR (C) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, IN NO EVENT SHALL SUPPLIER, ITS AFFILIATES, OR SUPPLIERS, OR CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, 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.

EXCEPT FOR (A) ANY BREACH OF THE "*SOFTWARE LICENSE,*" *RESTRICTIONS,*" "*EXPORT"* OR "*CONFIDENTIAL INFORMATION*" SECTIONS OF THIS AGREEMENT, OR ANY OTHER VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (B) SUPPLIER'S EXPRESS OBLIGATIONS UNDER THE *"INFRINGEMENT"* SECTION OF THIS AGREEMENT; (C) SUPPLIER'S COSTS OF COLLECTING DELINQUENT AMOUNTS WHICH ARE NOT THE SUBJECT OF A GOOD FAITH DISPUTE; (D) A PREVAILING PARTY'S LEGAL FEES PURSUANT TO SECTION 16(L) "LEGAL FEES"; OR (E) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF SUPPLIER, ITS AFFILIATES AND SUPPLIERS, AND CUSTOMER UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER FOR THE PRODUCTS OR MAINTENANCE SERVICES THAT ARE THE SUBJECT OF THE BREACH OR FIVE HUNDRED US DOLLARS (US$500.00). FOR MAINTENANCE SERVICES OR A PRODUCT SUBJECT TO RECURRING FEES, THE LIABILITY SHALL NOT EXCEED THE GREATER OF THE AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH MAINTENANCE SERVICE OR PRODUCT DURING THE TWELVE (12) MONTHS PRECEDING THE BREACH OR FIVE HUNDRED US DOLLARS (US$500.00). THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SUPPLIER PROVIDING PRODUCTS, SOFTWARE, OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

Supplier's Affiliates and suppliers shall be beneficiaries of this "*Limitation of Liability"* section and Customer's Service Providers are entitled to the rights granted under the "*Third Party Use"* section of this Agreement; otherwise, no third party beneficiaries exist under this Agreement. Supplier expressly excludes any and all liability to Customer's Service Providers, Clients and to any other third party.

14. 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, personal data, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Products (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Products, 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 Agreement 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 or permit disclosure of the Disclosing Party's Confidential Information to any third party, except as permitted in Section 14(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 14 shall apply to all disclosures of the parties' Confidential Information as of the Agreement 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 its any of its Affiliates, directors, officers, employees, consultants 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, (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 14. 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. Compliance Verification. Customer agrees to maintain and use systems and procedures to accurately track, document, and report its installations, acquisitions and usage of the Products. Such systems and procedures shall be sufficient to determine if Customer's deployment of the Products is within the quantities, Product Terms, and maintenance releases to which it is entitled. Supplier or its designated auditing agent shall have the right to audit Customer's deployment of the Products for compliance with the terms and conditions of this Agreement and the applicable Order(s). Any such audits shall be scheduled at least ten (10) days in advance and shall be conducted during normal business hours at Customer's facilities. Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers. Without limiting the generality of the foregoing, as part of the audit, Supplier may request, and Customer agrees to provide, a written report signed by an authorized representative, listing Customer's then current deployment of the Products. If Customer's deployment of the Products is found to be greater than its purchased entitlement to such Products, Customer will be invoiced for the over-deployed quantities at Supplier's then current list price plus the applicable Maintenance Services and applicable over-deployment fees. All such amounts shall be payable in accordance with this Agreement. Additionally, if the unpaid fees exceed five percent (5%) of the fees paid for the subject Products, then Customer shall also pay Supplier's reasonable costs of conducting the audit. The requirements of this Section shall survive for two (2) years following the termination of the last License governed by this Agreement.

16. General.

(a) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Singapore, without giving effect to any conflict of laws principles. 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 states or countries in which the parties do business or are incorporated. Any action seeking enforcement of this Agreement or any provision hereof or remedies sought hereunder shall be brought exclusively in the courts in the state and/or the country whose laws apply to this Agreement. Each party hereby agrees to submit to the jurisdiction of such courts.

(b) **Rights of Third Parties.** A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act (Cap. 53B of the Singapore Statutes) to enforce any of its terms and the parties hereto acknowledge that no right has been created or was intended to be impliedly or expressly conferred upon any third party. This section shall only apply if the Agreement is governed by the laws of Singapore as specified in Clause 16(a).

(c) **Assignment.** Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this Agreement, Licenses granted under this Agreement or any other rights provided hereunder without the prior written consent of Supplier. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

(d) **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 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.

(e) **Contact Information.** In the course of the business relationship between Customer and Supplier, Customer may provide to Supplier the business contact information of Customer, its employees, and its Affiliates (some of which may be considered to be personally identifiable information of the personnel of Customer and its Affiliates). Additionally, Customer may elect to send data to Supplier for diagnostic purposes

as part of Maintenance Services. Customer hereby (i) acknowledges that it has the right to provide such information and data to Supplier, (ii) consents for Supplier to store and use all such information and data for the purposes of managing its business relationship with Customer and performing Maintenance Services, and (iii) agrees that the information and data may be transferred to, accessed and used by Supplier employees worldwide in the course of their employment and as part of Supplier's standard business operations. All data and information that is Confidential Information will be subject to the *CONFIDENTIAL INFORMATION* section of this Agreement.

(f) **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 via a nationally or internationally 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..

(g) **Disclosure of Customer Status.** Supplier may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Supplier in its marketing communications.

(h) **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.

(i) **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 or administrative relief or such relief or order as may be granted by competent authority, without limiting its other rights and remedies.

(j) **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 the avoidance of doubt, an excuse of the obligation to pay fees due hereunder during the pendency of a force majeure event shall not operate to relieve Customer or its Affiliates of its contractual obligations to pay such fees.

(k) **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."

(l) **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.

(m) **Country Unique Terms**. If the Products are delivered in the following country ("Local Country"), this section sets forth specific provisions as well as exceptions to the terms and conditions in this Agreement. To the extent any provision applicable to the Local Country (the "Local Provision") set forth below is in conflict with any other term or condition in this Agreement, the Local Provision will supersede such other term or condition with respect to any licenses purchased in the Local Country.

Australia:

1. Taxes (section 7) – the following is added to this section:
   "If goods and services tax ("GST") is payable on a Taxable Supply made by Supplier under this Agreement, the amount of GST payable for that supply must be paid to Supplier as additional Consideration. For the purposes of this Section, capitalised terms not defined elsewhere in this Agreement have the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)."

2. Limitation of Liability (section 13) – the following is added to this section:
   "Nothing in these terms and conditions shall operate to exclude, restrict or modify the application of any provisions of the Competition and Consumer Act 2010 or any equivalent law ("Law"). If any condition or warranty is implied in these terms and conditions by any Law and the Law avoids or prohibits provisions in a contract excluding or modifying the application of, exercise of or liability under such condition or warranty, such condition or warranty shall be deemed to be included in these terms and conditions provided that the liability of Supplier, its Affiliates and licensors for breach of the condition or warranty, to the extent permitted by law, shall be limited to any one or more of the following: (a) if the breach relates to goods, at Supplier's option: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or (iv) the payment of having the goods repaired; and (b) if the breach relates to services at Supplier's option: (i) the supply of the services again; or (ii) the payment of having the services supplied again."

3. Governing Law and Venue (section 16(a)) - the phrase "the laws of Singapore" is replaced with "the laws of the State of Victoria of the Commonwealth of Australia."

Hong Kong S.A.R. and Macau S.A.R of China:

1. Governing Law and Venue (section 16(a)) - the phrase “the laws of Singapore” is replaced with “the laws of Hong Kong Special Administrative Region of China”.

India

1. Governing Law and Venue (section 16(a)) - the phrase “exclusively in the courts in the state or the country whose laws apply to this Agreement” is replaced with “exclusively in the High Court of Singapore”.

Japan

1. Taxes (section 7) – the words “, consumption tax” is added after the words “value added” in the second sentence.

2. Maintenance Services (section 10) in the first sentence, the following words: “or through its Partner” are added after the words “Supplier shall”

3. Maintenance Services (section 10) – the second sentence shall be deleted and replaced with the followings: “The first Maintenance Period begins after sixty (60) days from the date of shipping of the Software or the delivery of the relevant Software license keys following an Order (whichever occurs earlier), or an earlier date as specified in the applicable Order and ends twelve (12) months thereafter (“the Initial Maintenance Period”).

4. Maintenance Services (section 10 (a)), the following additional wordings “or through its Partner” are added after the words “Supplier shall”.

5. Maintenance Services (section 10 (b)), the first sentence is deleted and replaced with the followings: “Supplier shall or through its Partner respond to unlimited communications from Customer that report Software failures not previously reported to Supplier or Partner by Customer.”.

6. Maintenance Services (section 10 (c)) shall be amended to read as follows: “Supplier shall or through its Partner respond to requests from Customer’s technical coordinators for assistance with the operational/technical aspects of the Software unrelated to a Software failure; provided that Supplier or Partner shall have the right to limit such responses if Supplier or Partner reasonably determines that the volume of such non-error related requests for assistance is excessive or such requests are overly repetitive in nature.”

7. Maintenance Services (section 10 (e)) – the following sentence is added: “Business Critical Support is only available in English.”

8. Maintenance Services (section 10 (f)) is deleted in its entirety.

9. Governing Law and Venue (section 16(a)) - the phrase “the laws of Singapore” is replaced with “the laws of Japan”. And the phrase “exclusively in the courts in the state or the country whose laws apply to this Agreement” is replaced with “exclusively in the Tokyo District Court”.

10. General (section 16) – the following sub-section shall be added:
Language. This Agreement shall be prepared and executed in both Japanese and English languages. If there is any discrepancy in construction of the English and Japanese versions or there is inconsistency between them, the English version shall prevail.

11. Entire Agreement (section 16(n)) – the last sentence is replaced with: “Delivery of Products shall be made upon leaving Supplier’s office.”

Korea

1. Maintenance Services (section 10) – the second sentence is deleted and replaced with the followings: “The first Maintenance Period begins sixty (60) days following an Order and ends twelve (12) months thereafter unless otherwise set forth in the applicable Order (the “Initial Maintenance Period”). Maintenance Services will be allowed during the period from the Order date through the beginning of the first Maintenance Period.”

2. Governing Law and Venue (section 16(a)) - the phrase “the laws of Singapore” is replaced with “the laws of South Korea”. And the phrase “exclusively in the courts in the state or the country whose laws apply to this Agreement” is replaced with “exclusively in the Seoul Central District Court in Seoul, South Korea”.

3. **Contact Information (section 16 (e)) -** adding the following to the end of section 16 (e):
To the extent such access, use, storage or transfer of Contact Information concerns the personal information of natural persons, Customer hereby undertakes to ensure that specific individual consents are obtained from such natural persons prior to providing Supplier such Contact Information.

4. General (section 16) – the following sub-section shall be added:
   Language. This Agreement shall be prepared and executed in both Korean and English languages. If there is any discrepancy in construction of the English and Korean versions or there is inconsistency between them, the English version shall prevail.

New Zealand:

1. Warranties (section 11) - the following is added to this section:
   "If the Consumer Guarantee Act 1993 implies in this Agreement any condition or warranty and also prohibits provisions in a contract excluding or modifying the application of, exercise of or liability under that condition or warranty, that condition or warranty is deemed to be included in this Agreement."

2. Limitation of Liability (section 13) - the following is added to this section:
   "If Customer has acquired the goods and services under this Agreement as a consumer, as that term is defined in the Consumer Guarantee Act 1993, then the limitations in this Section are subject to the limitations in the Consumer Guarantees Act 1993."

3. Governing Law and Venue (section 16(a)) - the phrase “the laws of Singapore” is replaced with “the laws of New Zealand”.

People’s Republic of China (excluding Hong Kong S.A.R., Macau S.A.R. and Taiwan):

1. Taxes (section 7) is replaced with: “Each party shall be responsible for the taxes payable by that party in connection with the Products and Maintenance Services under this Agreement in accordance with the applicable tax laws in China.”

2. Maintenance services (section 10) – the second sentence is deleted and replaced with the followings: “The first Maintenance Period begins sixty (60) days following an Order and ends twelve (12) months thereafter unless otherwise set forth in the applicable Order (the “Initial Maintenance Period”). Maintenance Services will be allowed during the period from the Order date through the beginning of the first Maintenance Period.”

3. Governing Law and Venue (section 16(a)) is replaced with:
   “This Agreement shall be governed by and construed in accordance with the laws of the People’s Republic of China, without giving effect to any conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any dispute arising from or in connection with this Agreement shall be submitted to the China International and Economic and Trade Arbitration Commission (“CIETAC”) for arbitration which shall be conducted in accordance with CIETAC’s arbitration rules in effect at the time of arbitration. The arbitration tribunal shall consist of 3 arbitrators, one appointed by each party and, if either of the parties fails to appoint an arbitrator within the time specified in CIETAC’s arbitration rules, the Chairman of CIETAC shall make such an appointment. The third arbitrator shall be appointed by agreement between the parties, and, if the parties fail to jointly appoint the arbitrator within the time specified in CIETAC’s arbitration rules, the Chairman of CIETAC shall make such an appointment. The arbitration proceedings shall be held in Beijing and shall be conducted in the Chinese language. The arbitral award shall be final and binding upon both parties. The costs of arbitration shall be borne by the losing party, unless otherwise determined by the arbitration tribunal.”

Taiwan:

1. Maintenance services (section 10) – the second sentence is deleted and replaced with the followings: “The first Maintenance Period begins sixty (60) days following an Order and ends twelve (12) months thereafter unless otherwise set forth in the applicable Order (the “Initial Maintenance Period”). Maintenance Services will be allowed during the period from the Order date through the beginning of the first Maintenance Period.”

(n) **Entire Agreement.** This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter hereof 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 applicable Order shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding that may involve the Agreement. In the event of a conflict between the terms of this Agreement and the terms contained in an Order, the terms in the Order shall only control if the Order is signed by both Supplier and Customer; otherwise, the terms of this Agreement shall control. Neither this Agreement, nor an Order, 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 an Order. Delivery of Products shall be FOB Shipping Point.