

Transaction Services Agreement (Japan)

This Transaction Services Agreement (the “**Agreement**”) is made between you the Customer (“**Customer**” or “**You**”) and the Provider, as defined below. In consideration for the mutual promises and covenants contained herein, and such other good and valuable consideration, the sufficiency of which is hereby acknowledged, Provider and Customer hereby agree as follows:

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

For terms applicable to training courses (classroom and online) (“**Training**”), see Exhibit A.

1. Definitions.

“**Affiliate**” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.

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

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

A “**Day**” is eight (8) hours.

“**Documentation**” means the user manuals and documentation that Provider delivers with the Products.

An “**Engagement**” is a set of consecutive Workdays during which Provider shall perform Activities at Customer’s site.

“**Hardware**” means any hardware identified in the SO purchased by Customer from Provider under a separate agreement.

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

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

“**Provider**” means either Quest Software Japan.

“**Software**” means Provider’s proprietary software products identified in an SO or DOS and licensed by Customer under a separate agreement.

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

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 each SO upon receipt of Customer’s purchase order (“**PO**”) for the Activities and the estimated travel and living expenses, each as stated in the fees table of the SO. The estimated travel and living expenses stated in the SO shall be included as a separate line item on the PO. Provider, in its sole discretion, may waive the requirement for a PO if Customer confirms in writing that it does not issue PO for services such as those being provided by the SO or for reimbursable travel and living expenses.

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

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

(d) **Assumptions and Customer Obligations.** Customer agrees to sign weekly Time and Activity reports to confirm the performance of the Activities and, if training classes are being provided under the SO, sign the course evaluation forms prior to the departure of the on-site trainer. If the weekly Time and Activity reports are not signed by Customer within five (5) days of their

delivery or Customer has not submitted a written request for adjustment, they shall be considered to be correct and accepted by Customer.

The Time stated on the SO are based on these assumptions:

- Customer's environment will meet or exceed the hardware and operating environment software minimum requirements stated in the SO or the applicable QuickStart Guide provided to Customer by Provider.
- Customer and Provider will each report, and Provider will track, situations or events which impact the progress of the Activities. Customer and Provider shall cooperate to determine the actions needed, if any, to resolve them.
- Provider shall observe all public holidays, and any state and territory holidays applicable for the places where the Activities will be performed.

In addition, Customer shall:

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

3. Time. Provider does not represent that the planned Activities shall be completed within the Time stated on the 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 SO. Following Customer's email or equivalent approval, Provider may reallocate the Time stated in the SO among the various resources stated in the fees table of the SO, provided such reallocation does not exceed the Estimated Total Fees set forth therein. Activities shall use Prepaid Time, if any, before non-Prepaid Time.

4. Fees.

(a) **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 amounts payable under the SO are exclusive of all service tax, sales, use, value added, withholding and other taxes and duties. Customer shall pay all applicable taxes and duties assessed in connection with the SO. All applicable state and local taxes and travel and living expenses, if any, shall be billed as separate line items.

When Provider contracts to perform Activities independently and/or contemporaneously with the sale of a software license within Australia, Customer agrees to account for Provider's GST liability related to such transaction(s) as a reverse charge in its Business Activity Statement as required under Division 83 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

For Activities to be performed in India and Southeast Asia region, if Customer withholds any part of a payment due to Provider because local law requires payment of certain withholding taxes or duties by Customer directly to the local government, Customer will provide Provider with written documentation, including but not limited to copies of receipts of any and all such taxes or duties paid in connection with the SO. To the extent Customer fails to provide any withholding tax receipts evidencing the payment of withholding taxes in the relevant quarter within forty-five days upon Customer's filing of the withholding taxes of that quarter (and for Thailand and Indonesia, in the relevant month within forty-five days upon Customer's filing of the withholding taxes of that month), the underlying withholding taxes shall become due and payable immediately to Provider.

(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 are estimated in the fees table and, unless stated otherwise in the SO, shall be subject to the following guidelines:

- Airline fares shall be coach or "Y" class fares; however, whenever possible, 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 local Tax Office approved reimbursement per kilometer.
- Taxi or public transport charges to and back from Customer's locations and airports with receipts provided.
- 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 Activities performed in Australia or New Zealand, including travel days, will be billed at \$60.00 in local currency per day; no receipts for meals shall be provided.
- Meals for Activities performed in India, including travel days, will be billed at \$50.00 US Dollars per day; no receipts for meals shall be provided

- Meals for Activities performed in Southeast Asia region, including travel days, will be billed at \$50.00 Singapore Dollars per day; no receipts for meals shall be provided.

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

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

(d) **Normal Business Hours, Weekends, and Holidays.** Unless otherwise agreed by the parties, Activities shall be performed during Monday through Friday 9:00 a.m. to 6:00 p.m. local time ("**Normal Business Hours**"), excluding weekends and holidays. Generally, a Workday is eight (8) hours and equivalent to a Day; however, upon mutual agreement by the parties, Provider may work more than eight (8) hours in a Workday and may work four (4) ten-hour Workdays in a calendar week. For billing purposes, a Workday on which Provider works ten (10) hours is equal to one and one quarter (1.25) Days; a week in which Provider works four (4) ten-hour Workdays is equal to five (5) Days.

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

5. Intellectual Property. During the performance of the Activities, 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 countries where the Activities are performed, the United States, Canada or any other jurisdiction or under any federal, state, or foreign laws. Upon Provider's receipt of payment for the Activities, Customer shall be granted a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable, non-sublicensable license to use the IP for its internal business purposes. Notwithstanding the foregoing, nothing contained in this clause shall grant Provider any ownership rights to Customer's Confidential Information.

6. Warranty.

(a) **Performance.** Provider warrants that the Activities shall be performed in a workmanlike, technically correct manner and with professional diligence and skill. 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 Activities reported to Provider, in writing, by Customer within thirty (30) days of the performance of the Activities or refund the fees paid for such nonconforming Activities. For the purposes of this Section, a "technically correct manner" means that the Activities 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 Activities, (ii) the right to use and provide the IP used during the performance of the Activities, and (iii) the right to convey any licenses granted hereunder. Customer's sole and exclusive remedy, and Provider's entire liability for any breach of the warranty in the preceding sentence, shall be for Provider to perform its obligations under Section 9.

THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY 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.

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

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

Party's Confidential Information. Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Confidential Information, as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party, unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

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

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

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

9. Third Party Claims

(a) **Infringement.** 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 9(a) 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 Customer's use of the IP after Provider recommends discontinuation because of possible or actual infringement, (iv) based on Customer's use of a superseded or altered release of IP, if the infringement would have been avoided by use of a current or unaltered release of the IP made available to Customer, or (v) to the extent the IP Claim arises from, or is based on, the use of the IP with other products, services, or data not supplied by 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 for Customer the right to continue using the IP, (ii) replace the IP with a functionally equivalent non-infringing product, (iii) modify the IP so that it is non-infringing, or (iv) accept the return of the infringing IP and refund the fee paid for the infringing IP, pro-rated over a sixty (60) month period from the date of delivery of the IP. This Section states the entire liability of Provider, and Customer's sole and exclusive remedy, with respect to an IP Claim.

(b) **General.** At a party's request (the "**Defended Party**"), the other party (the "**Defending Party**") shall, at its own expense, defend or settle any claim, suit, action, or proceeding brought against the Defended Party by a third party which primarily alleges that the Defending Party's negligent or wrongful acts or omissions have directly harmed such third party ("**Claim**"). Additionally, the Defending Party shall pay any judgments on a Claim finally awarded by a court of competent jurisdiction or any settlements reached

and the Defended Party's reasonable and necessary administrative expenses in responding to the Claim, including, but not limited to, reasonable attorneys' fees.

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

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

10. Term and Termination.

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

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

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

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

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

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

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

(i) Worker's Compensation Insurance, as required by applicable law, and Employers' Liability Insurance with a limit of liability not less than US\$1,000,000 combined single limit per occurrence for bodily injury by accident.

(ii) Commercial General Liability Insurance (bodily injury and property damage) with contractual liability insurance. The limits of liability of such insurance shall not be less than US\$1,000,000 combined single limit each event and US\$2,000,000 general total limit.

(iii) Automobile Bodily Injury and Liability Insurance, covering owned, non-owned and hired automobiles, the limits of which shall not be less than US\$1,000,000 combined single limit per occurrence.

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

15. General.

(a) This Agreement shall be governed by and construed in accordance with the laws of i) the State of Victoria of the Commonwealth of Australia if Activities are performed in Australia; or ii) New Zealand if Activities are performed in New Zealand; or iii) Singapore if Activities are performed in India or Southeast Asia region, without giving effect to any conflict of laws principles that would require the application of laws of a different state. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement,

regardless of the states in which the parties do business or are incorporated. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the courts located in the state and/or country whose laws apply to this Agreement. Each party hereby agrees to submit to the jurisdiction of such courts.

(b) 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.

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

(d) All notices, requests, demands or communications required or permitted hereunder, including, but not limited to, billing contact information, shall be in writing, delivered personally, sent by facsimile or e-mail, or mailed by first class mail, postage prepaid, addressed to the legal department of the respective party or to such other address as shall be specified in writing by either of the parties to the other in accordance with this Section. All notices, requests, demands or communications shall be deemed effective upon personal delivery or ten (10) days following deposit in the mail in accordance with this paragraph.

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

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

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

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

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

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

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

EXHIBIT A
TRAINING

The terms of this Exhibit A apply to Training. In the event of a conflict or ambiguity between these terms and the rest of the Agreement, including without limitation terms regarding warranties, these terms shall take precedence and control.

(1) Classroom

(a) Cancellation.

(i) If, due to factors beyond Customer's reasonable control, Customer is not able to attend the purchased class (the "**Class**"), it may so notify Provider in writing and Provider may, in its sole discretion, allow Customer to attend a different Class or send a substitute student who meets the student experience guidelines (which are made available during the registration process).

(ii) Provider may cancel a Class if it has less than the minimum attendance level by providing written notice of the cancellation at least fifteen (15) working days prior to the first day of the Class. In the event of such a cancellation, the fee for the Class will be refunded; however, Provider shall have no liability to Customer for expenses it may have incurred, including but not limited to travel expenses, in preparing to attend such Class.

(iii) At the conclusion of a Class, Provider will provide a test of the material. Failure to pass shall not entitle Customer to a refund of any kind.

(b) Attendees. Each attendee must meet the student experience guidelines, which are made available during the registration process. Customer may substitute one Class attendee for another provided that the substituted person meets such guidelines.

(c) Instructional Materials. Class attendees will receive instructional materials in printed and/or electronic form (the "**Materials**"). Customer may use and make a reasonable number of copies of the Materials solely and exclusively for its own use in installing and deploying the Software. Provider reserves all rights to such Materials which are not expressly granted to Customer in this Agreement. Customer understands and agrees that (i) the Materials are protected by copyright and other intellectual property laws and treaties, (ii) Provider and/or its suppliers own the title, copyright, and other intellectual property rights in the Materials, and (iii) this Agreement does not grant Customer any rights to Provider's trademarks or service marks.

Provider may provide a virtual computer image of the Provider products which are the subject of the Class (the "**Image**"). The Image may only be used in the classroom and may not be copied or removed from the classroom. Any media on which the Image was provided must be returned to Provider prior to the Class attendee's departure from the Class.

(d) Certification. Some Classes may offer a skill level certification (a "**Certification**"). If the Class offers a Certification, Provider will provide the rules and guidelines applicable to the Certification during the Class. All Certifications must be completed within ninety (90) days following the last day of the applicable Class unless an exception or extension is granted by Provider. No refunds will be provided for failure to achieve a Certification pursuant to those rules and guidelines or failure to attend scheduled Certification exam. To reschedule a Certification exam, Provider must have written notice at least forty eight (48) hours prior to the start of the exam. A Certification exam may only be rescheduled one time for each Class attendee.

(e) Warranty. Provider warrants that each Class shall be presented in a technically correct manner and with professional diligence and skill. The foregoing warranty is valid during the Class and for ten (10) days following the completion of the Class (the "**Classroom Training Warranty Period**"). All breaches of the foregoing warranty must be reported to Provider in writing during the Classroom Training 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 Class to another Class offered within nine (9) months of the non-conforming Class or refund the fees paid for such Class. For the purposes of this Section a "technically correct manner" means that the technical information provided during the Class was substantially accurate and consistent with the applicable Documentation.

2. Web Based Training ("WBT")

(a) The Courses. Each WBT course (each, a "**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 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 Course will expire without right of refund. The Course may only be taken by one person within Customer's organization.

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

(c) Warranty. 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 Course and for ten (10) days following the completion of the 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 Course to another Course offered within nine (9) months of the non-conforming Course or refund the fees paid for such Course. For the purposes of this Section a "technically correct manner" means that the technical information provided during the Course was substantially accurate and consistent with the applicable Documentation.