

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Agreement: the Commercial Terms and these Terms and Conditions.

Authorised Users: those employees of the Customer and/or of any independent contractors acting on behalf of the Customer who are entitled to use the Software under this agreement.

Business Day: any day which is not a Saturday, Sunday or public or bank holiday in the United Kingdom and **Normal Business Hours** shall mean 9.am to 5.30pm local UK time on any Business Day.

Client Software: means Quest's proprietary software supplied for use on the Customer's computers in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under this agreement;

Commercial Terms: the commercial terms under which Quest and the Customer shall first agree details in relation to the Services including the Fees and the duration of this Agreement and which the Customer accepted on entering into this Agreement or otherwise accepts in writing from time to time.

Confidential Information: means all information whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is identified as confidential at the time of disclosure or which ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Customer: means the contracting party who accepts this Agreement.

Customer Data: the data inputted into the information fields of the Software by the Customer or by Authorised Users.

Customer Forms: the electronic forms and reports into which Customer Data is inputted, as proscribed by the Customer and produced by Quest from time to time.

Effective Date: the date on which the Customer accepts these Terms and Conditions.

Fees: the fees payable to Quest for the Software and Services, as described in the Commercial Terms or otherwise notified to the Customer by Quest from time to time.

Hosted Software: Quest's proprietary software accessible via the internet in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under this agreement.

Hosting Services: the services that Quest provides to facilitate Authorised Users with access to, and use of, the Hosted Software.

Initial Term: any initial term specified in the Commercial Terms and if none is specified, the period of 12 months from the Effective Date.

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Maintenance and Support: any error corrections, updates and upgrades that Quest may provide or perform with respect to the Software, as well as any other support or training services provided to the Customer under this agreement.

Privacy Policy: Quest's privacy policy available via a link from the website at the following URL: www.questuk.com.

Quest: Quest End Computer Services Limited incorporated and registered in England and Wales with company number 01670075 whose registered office is at 7 Abbey Court, Sowton Industrial Estate, Exeter, Devon, EX2 7HY.

Services: the Hosting Services and/or Maintenance and Support as applicable, given the context in which the term **Services** is used.

Software: the Client Software and/or the Hosted Software, comprised in DataWeb, QMobile and/or Internet Quest (ISTD) as set out in the Commercial Terms.

Software Specification: the functionality and performance specifications for the Software, as set out in the Commercial Terms and in any other specification documentation provided to the Customer.

Term: has the meaning set out in clause 13.1.

Terms and Conditions: these terms and conditions as amended from time to time in accordance with clause 15.

Year: each period of twelve (12) months following the Effective Date and each anniversary thereof.

1.2 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not

limit the sense of the words preceding those terms

2 THIS AGREEMENT

2.1 These Terms and Conditions contain general terms relating to the provision by Quest of the Software and Services. Quest and the Customer shall first agree details in relation to the Software and Services including the Fees, the permitted number of Authorised Users and the duration of this Agreement. All such details shall be agreed in the Commercial Terms.

2.2 The Commercial Terms together with these Terms and Conditions will form the Agreement between the Customer and Quest. In the event of any conflict or inconsistency between the documents forming this Agreement, the following order of preference shall apply:

- 2.2.1 the Commercial Terms;
- 2.2.2 any third party terms and/or legal notices applicable to the Customer's use of certain aspects of the Services; and
- 2.2.3 these Terms and Conditions.

2.3 Where these Terms and Conditions are not expressly accepted by the Customer, they will be deemed to have been accepted by the Customer, and the Customer agrees to be bound by these Terms, when it places any order for, or pays for any Software and Services.

2.4 These Terms and Conditions shall prevail at all times to the exclusion of all other terms and conditions including any terms and conditions which You may purport to apply even if such other provisions are submitted in a later document or purport to exclude or override these Terms and neither the course of conduct between parties nor trade practice shall act to modify these Terms.

3 SOFTWARE

3.1 In consideration for the payment of the Fees in respect of the Software, Quest hereby grants to the Customer on and subject to the Terms and Conditions of this Agreement:

- 3.1.1 a non-exclusive, non-transferable licence for the duration of the Term to allow Authorised Users to access the Hosted Software (via Quest's Hosting Service) and to use the Hosted Software solely for the Customer's business purposes;
- 3.1.2 a non-exclusive, non-transferable licence for the duration of the Term to install any Client Software (if applicable) in machine-readable, object-code form only on the Customer's computers and to use the Client Software solely for the Customer's business purposes

3.2 Where Quest agrees to provide the Customer access to Internet Quest (ISTD), the parties acknowledge and agree that such software is used via a password-accessed website and, for the purposes of this Agreement, these Terms and Conditions and Internet Quest (ISTD) shall be deemed to be Hosted Software for the purposes of this Agreement.

3.3 In relation to the Software:

- 3.3.1 the rights provided under this clause 3 are granted to the Customer only, and shall not (except where otherwise agreed in writing between the parties) be considered granted to any subsidiary or holding company of the Customer;
- 3.3.2 the Customer may make one identical copy of the Client Software for archival or back-up purposes only and shall keep complete and accurate records of the number and location of each copy made pursuant to this clause.

3.4 The Customer shall not:

- 3.4.1 copy or attempt to copy (other than for the purposes of normal operation or as permitted by clause 3.3.2), duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties;
- 3.4.2 except to the extent and in the circumstances expressly required to be permitted by Quest by law, attempt to decompile, disassemble, reverse engineer, modify or otherwise reduce to human-perceivable form all or any part of the Software. All information required to achieve interoperability of the Software with other software programs in accordance with Section 50B of the Copyright Designs and Patents Act 1988, as amended, is available from Quest;
- 3.4.3 access all or any part of the Software in order to build a product or service which competes with the Software and/or the Services;
- 3.4.4 use the Software to provide services to third parties (other than those identified as Authorised Users);
- 3.4.5 subject to clause 16, transfer, temporarily or permanently, any of its rights under this Agreement, or
- 3.4.6 attempt to obtain, or assist third parties in obtaining, access to

- the Software, other than as provided under this clause 3.4; and
- 3.4.7 the Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and shall notify Quest immediately if the Customer becomes aware of any such unauthorised access or use.
- 3.5 In relation to Authorised Users:
- 3.5.1 the Customer's access to the Hosted Software shall be limited to the number of individual Authorised Users in respect of which the Customer has paid the Charges; and
- 3.5.2 the Customer shall ensure that each Authorised User keeps any password provided for use of the Software secure and confidential.
- 4 MAINTENANCE AND SUPPORT AND HOSTING SERVICES**
- 4.1 The parties agree that, in consideration for the payment of the Fees:
- 4.1.1 Quest shall perform the Maintenance and Support services; and
- 4.1.2 to the extent that the licensed Software includes Hosted Software, Quest shall perform the Hosting Services, in each case for the duration of the Term.
- 4.2 Maintenance and Support shall include all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Software Specification as provided by Quest from time to time. Support for additional features developed by Quest, as requested by the Customer, may be purchased separately at Quest's then current rates.
- 4.3 Quest shall use reasonable endeavours to maintain and update the Software. Should the Customer determine that the Software includes a defect, the Customer may at any time file error reports. During scheduled maintenance periods, Quest may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. Quest shall use reasonable endeavours to avoid unscheduled downtime for Software maintenance.
- 4.4 Quest shall maintain technical support on the two most current releases of the Software.
- 4.5 The Software will be supported during Normal Business Hours.
- 4.6 The Customer acknowledges and agrees that Quest shall be entitled to maintain a remote connection to the Client Software, solely for the purposes of providing Maintenance and Support. The nature of the connection shall be notified to the Customer. Quest shall use all reasonable endeavours using good industry practice to prevent any unauthorised use of the connectivity link. The Customer acknowledges and agrees that, in the event that the Customer obstructs, does not permit or withdraws permission for the methods of remote connectivity specified by Quest:
- 4.6.1 Quest will be unable to provide Maintenance and Support in accordance with this Agreement;
- 4.6.2 the Software may develop errors and defects and may no longer function as anticipated; and
- 4.6.3 Quest shall have no liability under this Agreement for any such failure to provide Maintenance and Support and/or for errors and defects in the Software.
- 5 CUSTOMER DATA**
- 5.1 The Customer (or, as appropriate, the person on behalf of which it is sending instructions, depending on its arrangements with that person) shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer shall also ensure that it is entitled to transfer the relevant Customer Data (including, without limitation, any personal data) to Quest so it may lawfully process the Customer Data in accordance with this Agreement on the Customer's behalf.
- 5.2 The Customer acknowledges and agrees that where an Authorised User uses the Hosted Software to send information and data to a third party who also uses the Hosted Software (including, without limitation, a lender, valuer or surveyor), such data and information will remain available for such third party's use, notwithstanding the earlier termination of this Agreement.
- 5.3 It is acknowledged that where the Software is being used by the Customer to send instructions to third party recipients those instructions will be routed via Quest's systems. Quest may therefore be in receipt of Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Quest to use reasonable commercial endeavours to assist with the restoration of the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Quest in accordance with its archiving procedures. Quest shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Quest to perform services related to Customer Data maintenance and back-up).
- 5.4 Quest shall be entitled to use Customer Data internally to monitor,

- develop and improve Quest's software and services (including the Software and Services provided pursuant to this Agreement) and the customer experience, ensuring the system is set up to maximise performance (including load/balance of servers).
- 5.5 Quest shall be entitled to use and disclose information collated from Customer Data in an aggregated manner for Quest's business purposes, provided that such re-use does not allow the Customer or any person to be identified or the details of any valuations or instructions generated by Authorised Users for the Customer to be identified. For the purposes of this clause 5.5, "**business purposes**" means use of such data and to provide aggregated housing market statistics. This clause 5.4 shall survive the expiry or termination of this Agreement, howsoever, arising for so long as Quest operates the Software or any service that may replace, substitute or supplement the Software.
- 5.6 If Quest processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the "data controller" (as defined by the Data Protection Act 1998) and Quest shall be a "data processor" (as defined by the Data Protection Act 1998) and in any such case:
- 5.6.1 each party shall comply with their respective obligations under the provisions of the seventh Data Protection Principle as set out in Schedule 1, Part 2 of the Data Protection Act 1998 as regards any personal data;
- 5.7 Quest shall:
- 5.7.1 process the "personal data" (as defined by the Data Protection Act 1998) only in accordance with the terms of this Agreement, its Privacy Policy and any lawful instructions reasonably given by the Customer from time to time;
- 5.7.2 have at all times during the term of this contract appropriate technical and organisational measures in place to protect any personal data against unauthorised or unlawful processing and against accidental loss or destruction or damage; and
- 5.7.3 have taken all reasonable steps to ensure the reliability of their staff who may have access to the personal data.
- 6 SUPPLIER'S WARRANTIES AND OBLIGATIONS**
- 6.1 Quest warrants and undertakes that:
- 6.1.1 it will provide the Services with reasonable care and skill and by means of appropriately qualified personnel;
- 6.1.2 the Software will operate substantially in accordance with the Software Specification for the duration of 30 days from installation, thereafter the Software shall be maintained in accordance with Maintenance and Support;
- 6.1.3 it will provide support for the establishment and maintenance of direct electronic links between Customer and specified key instruction sources.
- In the event of a breach of clause 6.1.2 by Quest, the Customer shall notify Quest and prior to taking any other action that is available to the Customer under this Agreement the Customer shall give Quest a reasonable opportunity to correct the defect within a reasonable time.
- 6.2 The warranties and undertakings at clause 6.1 shall not apply to the extent of any non-conformance which is caused by errors in transmission or use of the Software contrary to Quest's instructions or modification or alteration of the Software by any party other than Quest or Quest's duly authorised contractors or agents. If the Software does not conform with the foregoing warranties Quest will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranties and undertakings set out in clause 6.1. Notwithstanding the foregoing, Supplier does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.
- 6.3 This Agreement shall not prevent Quest from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.
- 6.4 Any third party services and/or software provided by Quest for the provision of the Services are provided "as is" without any warranty of any kind either express or implied, and Quest does not warrant that the third party services and/or any and all products and/or software shall be error-free or that such errors will be corrected. The Customer shall be solely responsible for all costs and expenses associated with rectification, repair or damage caused by such errors.
- 7 CUSTOMER'S OBLIGATIONS**
- 7.1 The Customer shall:
- 7.1.1 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify Quest promptly of any such unauthorised access or use;
- 7.1.2 provide Quest, in a timely manner, with all necessary co-

- operation in relation to this Agreement and all necessary access to such information as may be required by Quest in each case as reasonably necessary in order to render the Services in accordance with this Agreement;
- 7.1.3 procure the provision of such assistance by its personnel, as may be reasonably requested by Quest from time to time. The Customer shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement;
- 7.1.4 comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- 7.1.5 carry out all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Quest may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.
- 8 CHARGES AND PAYMENT**
- 8.1 The Customer shall pay Quest any Fees for the Software and Services (including use of the Software), as specified in the Commercial Terms.
- 8.2 All Fees stated or referred to in the Commercial Terms are exclusive of value added tax, which shall be added to Quest's invoice(s) at the appropriate rate.
- 8.3 Quest shall invoice the Customer for any applicable Fees for the Services provided by Quest in accordance with the provisions agreed in the Commercial Terms. Each invoice is due and payable 30 days after the invoice date. If Quest has not received payment of the Fees, in full, within five days after the due date, and without prejudice to any other rights and remedies of Quest:
- 8.3.1 Quest shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 8.3.2 interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of National Westminster Bank plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9 PROPRIETARY RIGHTS**
- 9.1 The Customer acknowledges and agrees that, save for in relation to the Customer Forms and Customer Data, Quest and/or its licensors own all Intellectual Property Rights in the Software and the Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation. For the avoidance of doubt all intellectual property rights in respect of the Customer Forms shall be owned by the Customer.
- 9.2 Quest confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 9.3 Each party covenants that, at the cost and request of the other party at any time and from time to time, it shall execute such deeds or documents and do such acts or things as may be necessary or desirable to perfect that other party's Intellectual Property Rights, as detailed at clause 9.1 above.
- 10 CONFIDENTIALITY**
- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party; or
- 10.1.2 was in the other party's lawful possession before the disclosure; or
- 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute Quest's Confidential Information.
- 10.6 Subject to its ongoing right to use aggregated Customer Data in accordance with clauses 5.3 and 5.4, Quest acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.7 This clause 10 shall survive termination of this Agreement, however arising.
- 11 WARRANTY AND INDEMNITY**
- 11.1 Subject to the provisions of clause 11.2, the Customer shall defend, indemnify and hold harmless Quest from and against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's misuse of the Software or Services or user error, provided that:
- 11.1.1 the Customer is given prompt notice of any such claim;
- 11.1.2 Quest provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 11.1.3 the Customer is given sole authority to defend or settle the claim.
- 11.2 Quest warrants that the provision of the Software and the Services does not, to the best of its knowledge, infringe any United Kingdom patent effective as of the Effective Date, copyright, database right or right of confidentiality.
- 11.3 In the defence or settlement of claims resulting from any breach of the warranty detailed at clause 11.2, Quest may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Customer. Quest shall have no liability if the alleged infringement is based on:
- 11.3.1 a modification of the Software by anyone other than Quest; or
- 11.3.2 the Customer's use of the Software in a manner contrary to this Agreement or contrary to any instructions given to the Customer by Quest; or
- 11.3.3 the Customer's use of the Software after notice of the alleged or actual infringement from Quest or any appropriate authority.
- 11.4 The foregoing states the Customer's sole and exclusive rights and remedies, and Quest's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.
- 12 LIMITATION OF LIABILITY**
- 12.1 This clause 12 sets out the entire financial liability of Quest (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 12.1.1 any breach of this Agreement;
- 12.1.2 any use made by the Customer of the Services, the Software or any part of them; and
- 12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly and specifically provided in this Agreement:
- 12.2.1 the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. Quest shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Quest by the Customer in connection with the Services, or any actions taken by Quest at the Customer's direction; and
- 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 12.3 Nothing in this Agreement excludes the liability of Quest:
- 12.3.1 for death or personal injury caused by Quest's negligence; or
- 12.3.2 for fraud or fraudulent misrepresentation, wilful default or any deliberate act or omission by a party.
- 12.4 Subject to clause 12.3:
- 12.4.1 Quest shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this Agreement; and
- 12.4.2 Quest's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement

in any Year during the Term shall be limited to the greater of:
(i) £10,000 or (ii) the price paid for the Services during that Year.

13 TERM AND TERMINATION

13.1 This Agreement shall commence on the Effective Date and shall continue thereafter for Initial Period), and subject always to earlier termination pursuant to clause 13 shall continue after the end of the Initial Period until terminated by either party giving to the other not less than three months' written notice to terminate to expire at the end of or at any time after the Initial Period.

13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

13.2.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

13.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

13.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

13.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction to a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

13.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

13.2.6 the other party ceases, or threatens to cease, to trade; or

13.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.3 On termination of this Agreement for any reason:

13.3.1 subject to clause 5.2, all licences granted under this Agreement shall immediately terminate;

13.3.2 subject to clause 5.2, each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;

13.3.3 each party shall, at the request of the other party provide reasonable assistance in managing the exit arrangements from this Agreement. Where a party is so requested to assist the other, the requesting party shall pay all reasonable costs incurred by the assisting party in rendering such assistance; and

13.3.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14 FORCE MAJEURE

14.1 Quest shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Quest or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (the "**Force Majeure Event**"), provided that the Customer is notified of such an event and its expected duration.

14.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by any reason of any Force Majeure Event, it shall:

14.2.1 give to the other party written notice of such delay or prevention stating the date such delay or prevention commenced, its cause and an estimate of its duration;

14.2.2 use all its reasonable endeavours to mitigate the effects of such Force Majeure Event; and

14.2.3 resume performance of its obligations as soon as reasonable practicable after the end of such Force Majeure Event.

14.3 If any Force Majeure Event continues for more than twelve (12) weeks

either party may terminate this Agreement on giving thirty (30) days written notice to the other.

15 VARIATION

The Customer acknowledges and agrees that Quest may change the Software Services or this Agreement at any time. Quest will publish any changes on or via the online home-page for the Services. If Quest reasonably believes that the Change is material and/or adversely affects the Customer ("**Material Change**"), it shall give the Customer at least 30 days' notice before it takes effect and it shall give the Customer the opportunity to accept or reject the Material Change. If Quest cannot publish the Material Change at least 30 days before it takes effect (for example because the change is necessary for the security of the Software and/or Services, because of regulatory change or because one of Quest's suppliers makes changes to its service at short notice), Quest will publish the Material Change as soon as it reasonably can. In the event of any rejection of a Material Change to this Agreement, this Agreement shall terminate with immediate effect.

16 ASSIGNMENT

16.1 Quest shall be entitled to assign or transfer the Agreement as it reasonably see fit.

16.2 The Agreement is personal to the Customer. The Customer shall not assign, transfer, sub-licence or otherwise deal with any of its rights and obligations under the Agreement without Quest's prior written consent.

16.3 Quest may authorise or allow its contractors and other third parties to provide to Quest and/or to the Customer services necessary or related to the Services and/or Software and to perform Quest's obligations and exercise Quest's rights under this Agreement, which may include collecting payment on Quest's behalf.

17 NOTICES

17.1 Any notice required to be given under this Agreement shall be via email or in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at the address that has been notified by that party for such purposes, or sent by fax to the other party's fax number.

17.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender). A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the time obtained by the sender's email).

18 GENERAL

18.1 Nothing in this Agreement shall create or be deemed to create a partnership, joint venture or principal-agent relationship between the parties and neither party shall have authority to bind the other in any way.

18.2 In no event will any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.

18.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

18.4 This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any previous agreement or understanding between the parties in relation to such subject matter. In entering into the Agreement, the parties have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this Clause it might otherwise have had in relation to any of the foregoing.

18.5 The only remedy available to either party for breach of this Agreement shall be for breach of contract under the terms of this Agreement and neither party shall be liable in tort or otherwise arising from such breach. Nothing in Clause 18.4 and this Clause 18.5 shall limit or exclude any liability for fraud.

18.6 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party irrevocably submits to the exclusive jurisdiction of the English courts.