

Quest Software Inc.
Master Software Transaction Agreement

US-MSTA-21-0058

This Master Software Transaction Agreement (the “**Agreement**”) is made between Quest Software Inc. with its principal place of business located at 4 Polaris Way, Aliso Viejo, California, 92656 (“**Provider**”) and City of Menlo Park, with its principal place of business located at 701 Laurel St., Menlo Park, CA 94025. (“**Customer**”).

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) “**Appliance**” means a computer hardware product upon which the Software is pre-installed and delivered.
- (c) “**Documentation**” means the user manuals and documentation that Provider makes available for the Software, and all copies of the foregoing.
- (d) “**License Type**” means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as indicated in the applicable Order.
- (e) “**License Entitlements**” means the quantities and versions of Products licensed to Customer, the new versions and releases to which Customer is entitled to under any active Maintenance Services, and the Product Terms that apply to each Product.
- (f) “**Maintenance Services**” means Provider’s maintenance and support offering for the Products as identified in the *Maintenance Services* Section below.
- (g) “**Overuse**” means Use that is in excess of Customer’s License Entitlements or any other unauthorized Use.
- (h) “**Partner**” means a reseller or distributor that is under contract with Provider or another Partner and is authorized via such contract to resell the Products and/or Maintenance Services.
- (i) “**Product Guide**” means the document located at http://quest.com/docs/Product_Guide.pdf that contains the Product Terms.
- (j) “**Product Terms**” means the terms associated with each License Type and any other terms associated with an individual Product.
- (k) “**Products**” means the Software and Appliance(s) provided to Customer by Provider.
- (l) “**Schedule**” means a document, such as a Provider Quotation, that is executed by the parties or their respective Affiliates in connection with an Order.
- (m) “**Software**” means the object code version of the software that is provided or made available to Customer pursuant to an Order as well as any new versions and releases of such software that are made available to Customer pursuant to this Agreement, and all copies of the foregoing. Software includes On-Premise Software and SaaS Software (as defined in the *Software License* Section), along with software that is delivered on an Appliance.
- (n) “**Use**” means Customer’s installations, deployment, access of or provision of access to, or use of each Product.

2. Ordering.

- (a) Customer and its Affiliates may order Products and Maintenance Services under this Agreement by either (i) issuing a purchase order (“**PO**”) to Provider, a Provider Affiliate, or a Partner, or (ii) by executing a Schedule with Provider or a Provider Affiliate (each Schedule or PO shall be an “**Order**”). Each Order shall include (i) a description, unit price, and quantity for each Product and/or Maintenance Service being ordered, (ii) for Software, the License Type, License duration (if other than perpetual), and an express indication if the Software is to be used for MSP purposes, or (iii) for a PO to Provider or its Affiliates, a statement that the PO is governed solely and exclusively by a specific Provider quotation. Each Order shall be the ordering party’s irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order and, except for POs to Partners, shall be subject to approval by Provider either in writing or by shipment (“**Approve**” or “**Approved**”).
- (b) If an Order is placed by an Affiliate of Customer, such Affiliate agrees to be bound by the terms of this Agreement and shall be considered the “**Customer**” as that term is used herein. If an Order is issued to and Approved by a Provider Affiliate, such Affiliate agrees to be bound by the terms of this Agreement and shall be considered “**Provider**” as that term is used herein.
- (c) Customer and Provider agree that (i) Orders issued by Customer to Provider shall be governed solely by the terms of this Agreement and the applicable Schedule (if any), and (ii) 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 (including but not limited to terms on Customer’s POs) will not be binding on Provider unless Provider accepts such terms in writing. For the avoidance of doubt, pricing and payment terms for Orders placed through a Partner shall be as agreed upon between Customer and the Partner.

(d) The Product Terms for each Order shall be as stated in the Product Guide as of the date of the Order unless Product Terms are stated in the applicable Schedule (if any). For the avoidance of doubt, Product Terms that conflict with the Product Guide and any future pricing commitments that are agreed upon by the parties must be stated in a Schedule signed by Provider and Customer.

3. Software License.

(a) **General.** Subject to the terms of this Agreement, Provider grants to Customer, and Customer accepts from Provider, a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to access and 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 (the "**License**"). 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) **On-Premise Software.** If Software is delivered to Customer for (i) Customer's installation and use on its own equipment or (ii) pre-installed by Provider on an Appliance ("**On-Premise Software**"), the License shall be perpetual (unless otherwise stated on the Order) and shall also include the right to (i) make a reasonable number of additional copies of the On-Premise 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 On-Premise Software is not being used for production purposes, and (ii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their use of the On-Premise Software. Each License for On-Premise Software shall only be installed by Customer in the country in which the On-Premise Software is initially delivered to Customer.

(c) **Software as a Service.** If an Order provides Customer with a right to access and use Software installed on equipment operated by Provider or its suppliers ("**SaaS Software**"), (i) the License for such SaaS Software shall be granted for the duration of the term stated in the Order (the "**SaaS Term**"), as such SaaS Term may be extended by automatic or agreed upon renewals, and (ii) the terms set forth in the *SaaS Provisions* Section of this Agreement shall apply to all access to and use of such Software. If any item of Software to be installed on Customer's equipment is provided in connection with SaaS Software, the License duration for such Software shall be for the corresponding SaaS Term, and Customer shall promptly install any updates to such Software as may be provided by Provider.

(d) **MSP License.** If an Order indicates that Software is to be used by Customer as a managed service provider, Customer shall be granted a License to use such Software and the associated Documentation to provide Management Services (an "**MSP License**"). "**Management Services**" include, without limitation, application, operating system, and database implementation, performance tuning, and maintenance services provided by Customer to its customers (each, a "**Client**"). Each MSP License is governed by the terms of this Agreement and the MSP terms in the Product Guide.

If an Order for an MSP License expressly permits Customer to install copies of the Software on its Clients' equipment or to provide its Clients access to the Software, then Customer shall ensure that (i) each Client only uses the Software and Documentation as part of the Management Services provided to it by Customer, (ii) such use is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Export* Section of this Agreement, and the applicable Order, and (iii) each Client cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent. At the conclusion of any Management Services engagement with a Client, Customer shall promptly remove any Software installed on its Client's computer equipment or require the Client to do the same. Customer agrees that it shall be jointly and severally liable to Provider for the acts and omissions of its Clients in connection with their use of the Software and Documentation and shall, at its expense, defend Provider against any action, suit, or claim brought against Provider by a Client in connection with or related to Customer's Management Services and pay any final judgments or settlements as well as Provider's expenses in connection with such action, suit, or claim.

(e) **Evaluation License.** If an Order indicates that Software is to be used by Customer for evaluation purposes, or if Software is otherwise obtained from Provider for evaluation purposes, Customer shall be granted a License to use such Software and the associated Documentation solely for Customer's own non-production, internal evaluation purposes (an "**Evaluation License**"). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days from the date of delivery of the On-Premise Software or from the date that access is granted to the SaaS Software, plus any extensions granted by Provider in writing (the "**Evaluation Period**"). There is no fee for an Evaluation License 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 will only be granted one Evaluation License per release of any item of Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Evaluation Licenses are provided "AS IS" and that Provider does not provide warranties or Maintenance Services for Evaluation Licenses.

(f) **Freeware License.** If Customer downloads a freeware version of Software from a Provider website, the terms of use of such Software shall be governed by the applicable Freeware definition set forth in the Product Guide (a "Freeware License"). Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Freeware Licenses are (i) provided "AS IS", (ii) Provider does not provide warranties or Maintenance Services for Freeware Licenses, and (iii) Freeware Licenses are for internal use only and may not be distributed to any third party.

(g) **Use by Third Parties.** Customer may allow its services vendors and contractors (each, a "Third Party User") to access and use the Software and Documentation provided to Customer hereunder solely for purposes of providing services to Customer, provided that Customer ensures that (i) the Third Party User's access to or use of the Software and Documentation is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Export* Section, and the applicable Order(s), (ii) the Third Party User cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent, and (iii) the Third Party Users promptly removes any Software installed on its computer equipment upon the completion of the Third Party's need to access or use the Software as permitted by this Section. Customer agrees that the acts and omissions of its Third Party Users related to this Agreement, the Software, and Orders shall be deemed the acts and omissions of Customer.

(h) **Third Party Licenses.** Some Products incorporate third party components which are subject to the terms of the third party licenses and whose licenses require Provider to publish copies of the licensing language and/or copyright notices. Copies of such third party licenses are available at <https://www.quest.com/legal/third-party-licenses.aspx>.

4. Restrictions. Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Software, or any part thereof unless and to the extent (a) such restrictions are prohibited by applicable law and (b) Customer has requested interoperability information in writing from Provider and Provider has not provided such information in a timely manner. 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, sublicense or distribute the Products or Documentation, (iii) provide, make available to, or permit use of the Products, in whole or in part, by any third party (except as expressly set forth herein), (iv) use the Products or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Provider, (v) remove Software that was delivered on an Appliance from the Appliance on which it was delivered and load such Software onto a different appliance without Provider's prior written consent, or (vi) perform or fail to perform any other act which would result in a misappropriation or infringement of Provider'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 software licenses which shall be either included with the Products or made available to Customer upon request. Customer may not use any license keys or other license access devices not provided by Provider, including but not limited to "pirate keys", to install or access the Software.

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

6. Title, Risk of Loss and Delivery. Provider, its Affiliates and/or its licensors own the title to all Software. Title and risk of loss to an Appliance shall pass from Provider to Customer upon shipment (unless the Appliance is rented, leased or loaned to Customer). Delivery of Products shall be by electronic download or electronic download and FOB Shipping Point.

7. Payment. Customer agrees to pay to Provider (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 Provider in full within thirty (30) days from the date of each invoice or such other period (if any) stated in a Schedule. Provider reserves the right to charge Customer a late penalty of 1.5% per month (or the maximum rate permitted by law, whichever is the lesser) for any amounts payable to Provider by Customer that are not subject to a good faith dispute and that remain unpaid after the due date until such amount is paid.

8. Taxes. The fees stated in an Order may not include taxes. If Provider 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 Provider's income.

9. Term and Termination.

(a) **Agreement Term.** The term of this Agreement will begin on the last or only date of the signatures below (the "**Effective Date**") and will continue until terminated as set forth below.

(b) **Agreement Termination.** This Agreement may be terminated by (i) mutual written agreement of Provider and Customer, (ii) either party for its convenience by providing written notice to the other party, which notice may be provided at any time following the two (2) year anniversary of the Effective Date, (iii) either party for a breach of this Agreement by the other party that the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach ("**Breach**"), (iv) Provider for a Breach by a Third Party User or Client.

(c) **Effect of Agreement Termination.** On the effective date of the Agreement termination (the "**Agreement Termination Date**"), Customer may no longer place, and Provider may no longer Approve Product Orders under this Agreement. If this Agreement is terminated by Provider for a Breach by Customer, a Third Party User or a Client of the *Restrictions, Export, Confidential Information, or Compliance Verification* Sections of this Agreement, all Licenses granted under this Agreement shall terminate on the Agreement Termination Date. If this Agreement is terminated for any other reason, (i) all existing Licenses and Orders shall continue in force unchanged and shall continue to be governed by the terms of this Agreement, and (ii) all future Approved Orders for Renewal Maintenance Periods for Software that was licensed under this Agreement prior to the Agreement Termination Date will be governed by the terms of this Agreement unless the parties agree otherwise in writing.

(d) **License Termination.** Licenses granted for a limited duration shall terminate at the end of such period. Additionally, (i) any License may be terminated upon mutual written agreement of the parties, (ii) Customer may, for its convenience with ten (10) days prior written notice to Provider, terminate perpetual Licenses for On-Premise Software not subject to periodic License fees payable to Provider or a third party, and (iii) Provider may terminate Licenses in the event Customer, a Third Party User or a Client Breaches the terms of the Order by which such Licenses were purchased or the terms of this Agreement as incorporated into such Order.

(e) **Effect of License Termination.** On the effective date of any License termination, all rights granted to Customer for the applicable Software 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 Third Party Users and Clients do the same, (iii) return the applicable Software to Provider 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 Software, (v) pay Provider or the applicable Partner all amounts due and payable up to the date of termination, and (vi) give Provider a written certification, within ten (10) days, that Customer, its Third Party Users and Clients, as applicable, have complied with all of the foregoing obligations.

(f) **Survival.** Any provision of this Agreement that requires or contemplates execution after (i) termination of this Agreement, (ii) a termination or expiration of a License, or (iii) the expiration of a SaaS Term, is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration, including, without limitation, the *Restrictions, Payment, Taxes, Effect of Agreement Termination, Effect of License Termination, Survival, Warranty Disclaimer, Infringement Indemnity, Limitation of Liability, Confidential Information, Compliance Verification*, and *General* Sections of this Agreement. 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.

10. Export. Customer acknowledges that the Products and Maintenance Services 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 to abide by the Export Controls. Customer hereby agrees to use the Products and Maintenance Services in accordance with the Export Controls, and shall not export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations. Customer hereby (i) represents that Customer is not an entity or person to which shipment of Products, or provision of Maintenance Services, 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. Customer shall, at its expense, defend Provider and its Affiliates from any third party claim or action arising out of any inaccurate representation made by Customer regarding the existence of an export license, Customer's failure to provide information to Provider to obtain an export license or any allegation made against Provider due to Customer's violation or alleged violation of the Export Controls (an **"Export Claim"**) and shall pay any judgments or settlements reached in connection with the Export Claim as well as Provider's costs of responding to the Export Claim.

11. Maintenance Services.

(a) **Description.** Except as otherwise stated in an Order or an amendment to this Agreement, during any Maintenance Period and for the applicable fees, Provider shall:

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

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

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

(iv) Provide access to Provider's software support web site at <http://quest.com/support/> (the **"Support Site"**).

(v) For Customers that have purchased a License to use Software in the "Privileged Account" family of products (**"PA Software"**) and have purchased Maintenance Services for the PA Software continuously since the purchase of such License, provide the **Privileged Account Appliance Replacement Program** (as described in the Product Guide) for the Appliance on which the PA Software is delivered (the **"PA Appliance"**).

Maintenance Services are available during regional business support hours (**"Business Hours"**) as indicated on the Support Site, unless Customer has purchased 24x7 Support. The list of Software for which 24x7 Support is available and/or required is listed in the Global Support Guide on the Support Site.

The Maintenance Services for Software that Provider 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. The applicable different terms, if any, shall be stated on the Support Site.

(b) **Maintenance Period.** For On-Premise Software, the first period for which Customer is entitled to receive Maintenance Services begins on the date of the initial delivery of the Software following an Approved Order and ends twelve (12) months thereafter unless otherwise set forth below or in the applicable Order (the **"Initial Maintenance Period"**). Following the Initial Maintenance Period, Maintenance Services for On-Premise Software shall automatically renew for additional terms of twelve (12) months (each, a **"Renewal Maintenance Period"**) at the prices stated on the Maintenance renewal Quotation 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. Unless otherwise agreed in writing, Customer must purchase Maintenance Services for all copies of each licensed Product or none at all for that Product. Customer may not cancel Maintenance Services on a

subset of licenses of a Product to reduce Maintenance fees. For purposes of this Agreement, the Initial Maintenance Period and each Renewal Maintenance Period shall be considered a **“Maintenance Period.”** For the avoidance of doubt, this Agreement shall apply to each Renewal Maintenance Period. Cancellation of Maintenance Services for perpetual Licenses for On-Premise Software will not terminate Customer’s rights to continue to use the On-Premise Software. Maintenance fees shall be due in advance of each Renewal Maintenance Period and shall be subject to the payment requirements set forth in this Agreement. The procedure for reinstating Maintenance Services for On-Premise Software after it has lapsed is posted at <https://support.quest.com/essentials/Reinstate-Maintenance-Services>.

For SaaS Software, the Maintenance Period is equal to the duration of the applicable SaaS Term. For non-perpetual Licenses for On-Premises Software or for non-perpetual MSP Licenses, the Maintenance Period is equal to the duration of the License.

12. Warranties and Remedies.

(a) **Software Warranties.** Provider warrants that, during the applicable Warranty Period (as defined in subsection (c) below),

(i) the operation of the Software, as provided by Provider, will substantially conform to its Documentation (the **“Operational Warranty”**);

(ii) the Software, as provided by Provider, will not contain any viruses, worms, Trojan Horses, or other malicious or destructive code designed by Provider to allow unauthorized intrusion upon, disabling of, or erasure of the Software, except that the Software may contain a key limiting its use to the scope of the License granted, and license keys issued by Provider for temporary use are time-sensitive (the **“Virus Warranty”**);

(iii) the media provided by Provider, if any, on which the On-Premise Software is recorded will be free from material defects in materials and workmanship under normal use (the **“Media Warranty”**); and

(b) **Appliance Warranties.** Except for the PA Appliance, Appliances are warranted in accordance with the warranty document delivered with the Appliance and/or included on the hardware manufacturers’ website. For the PA Appliance, Provider warrants that, during the applicable Warranty Period, the PA Appliance will operate in a manner which allows the PA Software, to be used in substantial conformance with the Documentation (the **“PA Appliance Warranty”**).

(c) **Warranty Periods.** The **“Warranty Period”** for each of the above warranties shall be as follows: (i) for the Operational Warranty as it applies to On-Premise Software, the Virus Warranty and the Media Warranty, thirty (30) days following the initial delivery of the Software following an Approved Order; (ii) for the Operational Warranty as it applies to SaaS Software, the duration of the SaaS Term; and (iii) for the PA Appliance Warranty, one (1) year following the initial delivery of the PA Appliance following an Approved Order.

(d) **Remedies.** Any breach of the foregoing warranties must be reported by Customer to Provider during the applicable Warranty Period. Customer’s sole and exclusive remedy and Provider’s sole obligation for any such breach shall be as follows:

(i) For a breach of the *Operational Warranty* that impacts the use of On-Premise Software, Provider shall correct or provide a workaround for reproducible errors in the Software that caused the breach within a reasonable time considering the severity of the error and its effect on Customer or, at Provider’s option, refund the license fees paid for the nonconforming Software upon return of such Software to Provider and termination of the related License(s) hereunder.

(ii) For a breach of the *Operational Warranty* that impacts the use of SaaS Software, Provider shall correct or provide a workaround for reproducible errors in the Software that caused the breach and provide a credit of the fees allocable to the period during which the Software was not operating in substantial conformance with the applicable Documentation.

(iii) For a breach of the *Virus Warranty*, Provider shall replace the Software with a copy that is in conformance with the Virus Warranty.

(iv) For a breach of the *Media Warranty*, Provider shall, at its expense, replace the defective media.

(v) For a breach of the *PA Appliance Warranty*, Provider shall fulfill its obligations under the applicable Appliance Replacement Program.

Additional Product-specific warranties and remedies may be stated in a Schedule.

(e) **Warranty Exclusions.** The warranties set forth in this Section shall not apply to any non-conformance (i) that Provider cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the applicable Product or by using the Product in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Product by anyone other than Provider.

(f) **No Warranty of Interoperability.** Certain Software may contain features designed to interoperate with third-party products. If the third-party product is no longer made available by the applicable provider, Provider may discontinue the related product feature. Provider shall notify Customer of any such discontinuation, however Customer will not be entitled to any refund, credit or other compensation as a result of the discontinuation.

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

(h) **High-Risk Disclaimer.** CUSTOMER UNDERSTANDS AND AGREES THAT THE PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HIGH-RISK OR HAZARDOUS ENVIRONMENT, INCLUDING WITHOUT LIMITATION, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, AIR TRAFFIC CONTROL, LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR ANY OTHER APPLICATION WHERE THE FAILURE OR MALFUNCTION OF ANY PRODUCT CAN REASONABLY BE EXPECTED TO RESULT IN DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR SEVERE ENVIRONMENTAL HARM (A **"HIGH RISK ENVIRONMENT"**). ACCORDINGLY, (I) CUSTOMER SHOULD NOT USE THE PRODUCTS IN A HIGH RISK ENVIRONMENT, (II) ANY USE OF THE PRODUCTS BY CUSTOMER IN A HIGH RISK ENVIRONMENT IS AT CUSTOMER'S OWN RISK, (III) PROVIDER, ITS AFFILIATES AND SUPPLIERS SHALL NOT BE LIABLE TO CUSTOMER IN ANY WAY FOR USE OF THE PRODUCTS IN A HIGH RISK ENVIRONMENT, AND (IV) PROVIDER MAKES NO WARRANTIES OR ASSURANCES, EXPRESS OR IMPLIED, REGARDING USE OF THE PRODUCTS IN A HIGH RISK ENVIRONMENT.

13. Infringement Indemnity. Provider shall indemnify Customer from and against 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 Provider has authorized Customer to use the Software, including, but not limited to the country to which the Software is delivered to Customer, or misappropriates a trade secret in such country (a **"Claim"**). Indemnification for a Claim shall consist of the following: Provider shall (a) defend or settle the Claim at its own expense, (b) pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and (c) reimburse Customer for the reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, it necessarily incurs in responding to the Claim. Provider's obligations under this *Infringement Indemnity* Section are conditioned upon Customer (i) giving prompt written notice of the Claim to Provider, (ii) permitting Provider to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing Provider with such cooperation and assistance as Provider may reasonably request in connection with the Claim. Provider 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 Provider, (c) based on Customer's use of any release of the Software after Provider recommends discontinuation because of possible or actual infringement and has provided a non-infringing version at no charge, or (d) 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 Provider if the infringement would not have occurred but for such use. If, as a result of a Claim or an injunction, Customer must stop using any Software (**"Infringing Software"**), Provider shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the License for the Infringing Software and (A) for On-Premise Software, 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 initial delivery of such Software following an Order, or (B) for SaaS Software, discontinue Customer's right to access and use the Infringing Software and refund the unused pro-rated portion of any license fees pre-paid by Customer for such Software. This Section states Provider's entire liability and its sole and exclusive indemnification obligations with respect to a Claim and Infringing Software.

13A. General Indemnification. Provider shall, at its own expense, defend or settle any claim, suit, action, or proceeding brought against Customer and its officers, agents and employees by a third party related to (i) injury to or death of a person, including employees of City or Provider, caused by Provider; or (ii) loss of or damage to real or tangible personal property caused by Provider (each a **"Claim"**). Additionally, Provider shall pay any judgments on a Claim finally awarded by a court of competent jurisdiction or any settlements reached and the Customer's reasonable and necessary administrative expenses in responding to the Claim, including, but not limited to, reasonable attorneys' fees.

Provider's obligations under this Section 13A are conditioned upon Customer (i) giving prompt written notice of the Claim to Provider; (ii) permitting Provider to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing Provider 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 Customer (**"Defended Party Liability"**), Customer shall reimburse Provider in proportion to the Defended Party Liability for (i) reasonable and necessary expenses Provider 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 Provider to Customer under the first paragraph of this Section 11(b) for Customer's administrative expenses in handling the Claim shall be reduced in proportion to the Defended Party's Liability.

14. 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 PROVIDER IS LIABLE TO PAY TO A THIRD PARTY UNDER THE INFRINGEMENT INDEMNITY SECTION OF THIS AGREEMENT AND CUSTOMER IS LIABLE TO PAY ON BEHALF OF OR TO PROVIDER UNDER THE SAAS ADDENDUM (IF APPLICABLE), EXPORT, AND MSP LICENSE SECTIONS OF THIS AGREEMENT, OR (C) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW, IN NO EVENT SHALL CUSTOMER OR ITS AFFILIATES OR PROVIDER, ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR (X) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR (Y) 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, OR CONFIDENTIAL INFORMATION SECTIONS OF THIS AGREEMENT, OR ANY OTHER VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (B) PROVIDER'S EXPRESS OBLIGATIONS UNDER THE INFRINGEMENT INDEMNITY SECTION OF THIS AGREEMENT AND CUSTOMER'S EXPRESS OBLIGATIONS UNDER THE SAAS ADDENDUM (IF APPLICABLE), EXPORT, AND MSP LICENSE SECTIONS OF THIS AGREEMENT, (C) PROVIDER'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 THE LEGAL FEES SECTION OF THIS AGREEMENT; OR (E) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF CUSTOMER AND ITS AFFILIATES AND PROVIDER, ITS AFFILIATES AND SUPPLIERS, FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER OR ITS AFFILIATES FOR THE PRODUCTS THAT

ARE THE SUBJECT OF THE BREACH, EXCEPT FOR MAINTENANCE SERVICES OR A PRODUCT SUBJECT TO RECURRING FEES, FOR WHICH THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY SHALL BE THE AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH MAINTENANCE SERVICE OR PRODUCT DURING THE TWELVE (12) MONTHS PRECEDING THE BREACH. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR PROVIDER PROVIDING PRODUCTS AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

Provider's Affiliates and suppliers and Customer's Affiliates shall be beneficiaries of this *Limitation of Liability* Section and Customer's Clients and contractors are entitled to the rights granted under the *MSP License* and *Use by Third Party Users* Sections of this Agreement; otherwise, no third party beneficiaries exist under this Agreement. Provider expressly excludes any and all liability to Customer's Third Party Users, Clients and to any other third party.

15. Confidential Information.

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

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the Effective Date; (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; (iv) are protected by Provider in accordance with its obligations under the *Protected Data* Section below or SaaS Addendum (if applicable), or (v) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information.

(b) **Obligations.** The Receiving Party shall (i) not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in subsection (c) below, and (ii) protect the Disclosing Party's Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this Section shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c) **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the "**Representatives**"), but only to those Representatives that (i) have a "need to know" in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement.

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

16. Protected Data. For purposes of this Section, "Protected Data" means any information or data that is provided by Customer to Provider during this Agreement that alone or together with any other information relates to an identified or identifiable natural person or data considered to be personal data as defined under Privacy Laws, and "Privacy Laws" means any applicable law, statute, directive or regulation regarding privacy, data protection, information security obligations and/or the processing of Protected Data.

Provider shall comply with all applicable Privacy Laws and implement reasonable technical and organizational measures to prevent unauthorized disclosure of or access to Protected Data by third parties. Customer shall use reasonable efforts to send only the least amount of Protected Data necessary for Provider to fulfill its obligations under this Agreement or any Order.

Customer hereby (i) represents that it has the right to send the Protected Data to Provider, (ii) consents for Provider to store and use the Protected Data worldwide for the sole purpose of performing its obligations under this Agreement and any applicable Orders, (iii) agrees that the Protected Data may be accessed and used by Provider and its Representatives worldwide as may be needed to support Provider's standard business operations, and (iv) agrees that Protected Data consisting of Customer contact information (e.g., email addresses, names) provided as part of Maintenance Services may be sent to Provider's third party service providers as part of Provider's services improvement processes.

17. Compliance Verification. In order to allow Provider to verify that Customer is not engaged in any Overuse of Products, Customer shall: (i) maintain and use systems and procedures that allow Customer to accurately and completely track, document, and report License Entitlements and Use of each Product; and (ii) allow Provider to audit Customer's Use of the Products (the "Audit"). Audits may be performed by Provider or its designated agent. Provider shall provide at least ten (10) days prior written notice to Customer before the start of an Audit and will conduct the Audit

during normal business hours at Customer's facilities. Customer shall provide, and will require its Clients and Third Party Users to provide, their full cooperation and assistance with such audit and provide access to the applicable records and computers.

(a) **Confidentiality.** Provider agrees that any Customer information gathered during the performance of an audit shall be Customer's Confidential Information under this Agreement. Customer agrees that it will not require any further confidentiality or nondisclosure agreements to be executed by Provider or its designated agents in connection with the Audit.

(b) **Excess Use.** If an Audit indicates that Customer has engaged in Overuse, then Customer will be invoiced for all Overuse quantities at Provider's then current list price plus any applicable Overuse fees, which may include but are not limited to, interest on past due amounts and prior Maintenance Service fees. If the Overuse is more than five percent (5%) of the License Entitlements, then Customer shall reimburse Provider for Provider's cost of performing the Audit.

18. SaaS Provisions. If Customer places an Order for SaaS Software, the terms and conditions of the Software as a Service Addendum included as Exhibit 1 (the "SaaS Addendum") are incorporated herein and made part of this Agreement.

19. General.

(a) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of laws principles that would require the application of laws of a different state. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in Orange County, California. Each party hereby agrees to submit to the jurisdiction of such courts.

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.

(b) **Assignment.** Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this Agreement, the Licenses granted under this Agreement or any other rights, interest or obligations hereunder, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise without the prior written consent of Provider. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

(c) **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 by law to effect the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Use by U.S. Government.** The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in Subsection (ii) of the *Infringement Indemnity* Section of this Agreement and the *Injunctive Relief* Section of this Agreement shall not be applicable.

(e) **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 to an email address specified by the receiving party, sent via a nationally recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid. All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail in accordance with this paragraph.

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

(g) **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.

(h) **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 relief, without limiting its other rights and remedies.

(i) **Counterparts.** This Agreement and the applicable Schedule(s) may be executed in one or more counterparts, including by facsimile, electronically, or via scanned copies, each of which shall be deemed an original and shall constitute one and the same instrument.

(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 added certainty, this Section shall not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.

(k) **Equal Opportunity.** Quest Software Inc. is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(l) **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."

(m) **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.

(n) **Entire Agreement.** This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter thereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement and any applicable Schedule shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced any judicial or arbitral proceeding that may involve the Agreement. Each party acknowledges that in entering into the Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement. In those jurisdictions where an original (non-faxed, non-electronic, or non-scanned) copy of an agreement or an original (non-electronic) signature on agreements such as this Agreement or an Order is required by law or regulation, the parties hereby agree that, notwithstanding any such law or regulation, an electronic, or scanned copy of and a certified electronic signature on this Agreement or any Order shall be sufficient to create an enforceable and valid agreement. In the event of a conflict between the terms of this Agreement and the terms contained in a Schedule signed by Provider, the terms in the Schedule shall control. For all other Orders, in the event of a conflict between the terms of this Agreement and the terms contained in an Order, the terms of this Agreement shall control. If necessary, Provider and Customers Affiliates shall negotiate in good faith to enter into a local agreement that reflects local laws, terms and conditions and references this Agreement. In the event of a conflict between the terms in this Agreement and the terms in any local agreement, the terms in the local agreement shall take precedence. 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.

IN WITNESS WHEREOF, Provider and Customer have caused this Agreement to be executed and delivered by their respective duly authorized representatives.

Quest Software Inc.

DocuSigned by:

Daniel Rothenberg

By: _____
AA110E8D2A15428...

Name: Daniel Rothenberg

Title: Sr. Corporate Counsel

Date: 7/30/2021

City of Menlo Park

DocuSigned by:

Starla Jerome-Robinson

By: _____
6BD907BD261744C...

Name: Starla Jerome-Robinson

Title: City Manager

Date: 7/30/2021

Exhibit 1

Software as a Service Addendum

This Software as a Service Addendum (“**Addendum**”) is made between you, the Customer (“**Customer**” or “**You**”) and Provider and is made part of the agreement (“**Agreement**”) between you and the Provider that references this Addendum. Defined terms used in this Addendum that are not otherwise defined herein shall have the meaning set forth in the Agreement.

1. **Definitions.** Capitalized terms not defined in context or in the Agreement shall have the meanings assigned to them below:
 - (a) “**Appropriate Safeguards**” shall mean appropriate safeguards pursuant to Art. 46 GDPR, such as binding corporate rules or standard data protection clauses adopted by the EU Commission, like the Standard Contractual Clauses defined below.
 - (b) “**Controller**”, “**Data Subject**”, “**Personal Data**”, “**processing**”, “**Personal Data Breach**”, “**Processor**”, “**Supervisory Authority**” shall have the meaning set forth in Article 4 of the GDPR.
 - (c) “**Customer Personal Data**” shall mean Personal Data that Customer provides to Provider (in Provider’s capacity as a Processor) through Customer’s use of SaaS Software.
 - (d) “**Data Protection Laws**” means all laws and regulations, including laws and regulations of the European Union such as the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (the “**GDPR**”), and, as the case may be, of any other country which has implemented data protection principles similar to the GDPR and has been recognized by the European Commission as providing an adequate level of protection, applicable to the processing of Personal Data.
 - (e) “**SaaS Environment**” means the systems to which Customer is provided access in connection with its use of the SaaS Software.
 - (f) “**Standard Contractual Clauses**” or “**Model Clauses**” means the EU Standard Contractual Clauses ((EU-)controller to (Non-EU/EEA-) processor) for the transfer of personal data to processors established in third countries, as approved by the European Commission in decision 2010/87/EU, or any successor set of such clauses as approved from time to time by the European Commission.
 - (g) “**Sub-processor**” means a Processor engaged by Provider for the provision of all or any part(s) of the SaaS Software.

2. **SaaS Provisions.**
 - (a) **Data.** Customer may store data on the SaaS Environment. Customer is solely responsible for collecting, inputting, validating and updating all Customer data stored in the SaaS Environment. Customer represents and warrants that it has obtained all rights, authorizations and consents necessary to use and transfer all Customer and/or third-party data within and outside of the country in which Customer or the applicable Customer Affiliate is located (including providing adequate disclosures and obtaining legally sufficient consents or authorizations from Customer’s employees, customers, agents, and contractors). If Customer transmits data to a third-party website or other location for access by the SaaS Software, Customer will be deemed to have given its consent and/or authorization for access by Provider.

 - (b) **Conduct.** When using the SaaS Software, Customer shall not: (i) use the SaaS Software in breach of applicable law and in particular Customer will not transmit any content or data that is unlawful or infringes any intellectual property rights of third parties; (ii) circumvent or endanger the operation or security of the SaaS Software or attempt to probe, scan or test the vulnerability of the SaaS Software, the SaaS Environment, or a system, account or network of Provider or any of Provider’s customers or suppliers; (iii) transmit unsolicited bulk or commercial messages; or (iv) intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items. Customer shall cooperate with Provider’s reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this Section, and shall, at its expense, defend Provider and its Affiliates from any claim, suit, or action by a third party (a “**Third Party Claim**”) alleging harm to such third party caused by Customer’s breach of any of the provisions of this Section. Additionally, Customer shall pay any judgments or settlements reached in connection with the Third Party Claim as well as Provider’s costs of responding to the Third Party Claim.

 - (c) **Suspension.** Provider can temporarily limit or suspend Customer’s access to the SaaS Software to prevent damages, if it is sufficiently probable that the continued use of the SaaS Software may result in harm to the SaaS Software, other Provider customers, or the rights of third parties in such a way that immediate action is required to avoid damages or Customer is in breach of the Conduct section above. Provider will notify Customer of the limitation or suspension without undue delay. If circumstances allow, Customer shall be informed in advance in writing or by email. Provider will limit the suspension or limitation in time and scope as reasonably possible under the circumstances and will promptly restore access, and notify Customer of the restoration, when the issue causing the suspension or limitation has been resolved.

 - (d) **Availability.** Provider will make commercially reasonable efforts to make the SaaS Software available twenty-four hours a day, seven days a week except for scheduled maintenance, the installation of updates,

those factors that are beyond the reasonable control of Provider, Customer's failure to meet any minimum system requirements communicated to Customer by Provider, and any breach of the Agreement or this Addendum by Customer that impacts the availability of the SaaS Software. Provider shall provide reasonable advance notice to Customer of any scheduled maintenance.

3. SaaS Security.

- (a) **General Security Policies.** Provider takes the security and confidentiality of our Customer's data (including Personal Data) seriously. Provider is committed to maintaining and improving its information security practices and minimizing exposure to security risks. To that end, details on Provider's information security practices, data breach response policies, technical and organizational measures, and software development security practices are available at: www.quest.com/legal/security.aspx (collectively "Security Site"). Customer agrees that Provider may modify its Security Site so long as it does not materially decrease the overall level of protection provided. In addition to the general security practices specified on the Security Site, for the KACE-as-a-Service Product, Provider will adhere to the security practices outlined in the KACE-as-a-Service Solutions Overview and FAQ document attached as Exhibit 3 to the Agreement. Customer agrees that Provider may modify policies specified therein so long as it does not materially decrease the overall level of protection provided. Provider will provide the then-current version of the Solutions Overview and FAQ document upon request.
- (b) **Data Center Security and Locations.** Provider uses commercial hosting providers to host the SaaS Environment. The applicable hosting provider for the SaaS Environment will be identified as a Sub-Processor. Provider will only use hosting providers that meet industry standard security requirements and undergo independent assessments of their security procedures such as Service Organization Control (SOC) audits, SSAE 18 audits, and/or ISO certifications. Provider shall provide copies of the hosting providers' certifications upon request. Customer will be provided the option of selecting which geographic region the SaaS Environment will be hosted in upon initial configuration of the SaaS Software. Once selected, Provider shall not change the geographic region without Customer's prior consent.
- (c) **Data Secrecy.** Provider will only use personnel who are informed of the confidential nature of data deemed "confidential" under the Agreement, including specifically the Customer Personal Data, to process any such data. Provider will require all Provider personnel supporting the SaaS Software in accordance with this Addendum and the Agreement to execute confidentiality agreements relating to the protection of data, including Customer Personal Data. Provider shall ensure that such confidentiality obligations survive the termination of employment for any such personnel. Provider will regularly train individuals having access to data, including Customer Personal Data in data security and data privacy requirements and principles.
- (d) **Limited Processing and Disclosure.** Provider may process and disclose data, including Customer Personal Data (i) to affiliated entities, for purposes consistent with the Agreement and in accordance with the terms of this Addendum or (ii) for legal purposes, including enforcement of its rights, detecting and preventing fraud, protecting against harm to the rights or property of Provider, Customer or Customer's users, or the public; and (iii) as required by law, including in response to a subpoena, judicial or administrative order.

4. **Cooperation.** Except as prohibited by law or contract, Provider shall, upon Customer's request, reasonably cooperate with Customer on Data Subject requests and will promptly notify Customer if Provider receives a request from a Data Subject whose data has been provided under this Agreement either (a) requesting the right to access to, correct, amend or delete that Data Subject's Personal Data; (b) opposing the processing of her or his Personal Data under this Agreement; and/or (c) wishing to exercise her or his right to portability or to be forgotten under GDPR. Provider shall not respond to such Data Subject's request without Customer's prior written approval, except in order to confirm that such request is properly directed to Customer.

5. **Audit Rights.** Upon Customer's request and subject to the confidentiality obligations of the Agreement, Provider will make available to Customer information reasonably necessary to demonstrate its compliance with the obligations under this Addendum and allow for and contribute to audits, including inspections, conducted by Customer (or its third party auditor), at Customer's expense, in relation to the Processing of the Personal Data by Provider.

6. **Data Transfers Outside the EEA.** Where the provision of the SaaS Software and associated services involves the transfer of Personal Data from Customer to Provider from the European Economic Areas ("EEA") to a country or countries outside the EEA that are not recognized by the European Commission as countr[ies] providing adequate data protection, such transfer shall be subject to the Standard Contractual Clauses which are incorporated herein by reference and agreed to by the Parties. For all purposes relating to such transfers, (i) Appendix 1 to this Addendum shall also constitute Appendix 1 to the Standard Contractual Clauses; (ii) Provider's technical and organizational measures set forth at the Security Site (defined above) shall constitute Appendix 2 to the Standard Contractual Clauses; and (iii) Customer shall be the Data Exporter and Provider shall be the Data Importer. For transfers from the EEA between Provider and Sub-processors, Provider shall ensure such transfers use Appropriate Safeguards.

7. Sub-processors.

- (a) Customer acknowledges and agrees that Provider may retain Affiliates of Provider and third party providers as Sub-processors in connection with the provisioning of the SaaS Software.
- (b) Provider shall execute the appropriate written agreements with Sub-processors in accordance with the provisions of this Addendum and the instructions herein between Customer and Provider.
- (c) Provider is responsible for any breaches of this Addendum to the extent caused by Sub-processors retained by Provider.
- (d) Provider maintains lists of sub-processors per product available to Customer at <https://support.quest.com/subprocessor>. At least ten (10) business days before authorizing any new Sub-processor to access Personal Data, Provider will update the list of Sub-processors and provide Customer with a mechanism to obtain notice of that update. Where Provider is Processor, the following terms apply:
 - i) If Customer does not approve of a new Sub-processor, then Customer may terminate any subscription for the affected SaaS Software without penalty by providing, before the end of the notice period, written notice of termination that includes an explanation of the grounds for non-approval.
 - ii) After termination as described immediately above, Customer shall remain obligated to make all payments required under any Order or other contractual obligation and shall not be entitled to any refund or return of payment from the Partner and/or Provider.

8. Personal Data Breach Notification. In addition to the obligations set forth in the Security Site, Provider will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. Provider may provide such information in phases as it becomes available. Provider agrees to make good faith efforts to identify the cause of such Personal Data Breach and take such steps as Provider deems necessary and reasonable in order to remediate the cause of the Personal Data Breach to the extent the remediation is within Provider's reasonable control. The obligations herein shall not apply to the extent that the Personal Data Breach is caused by Customer or Customer's, Agents, Affiliates, or contractors.

9. Return and Deletion of Customer Personal Data.

- (a) Customer shall notify Provider at least 30 (thirty) days before the expiration or earlier termination of the SaaS Term for any reason of its intent to have the Customer Personal Data returned to Customer or deleted. If requested to return Customer Personal Data, Provider shall return Customer Personal Data to the extent allowed by applicable law in a commonly used format.
- (b) Unless Customer requests Customer Personal Data be returned, following termination of the SaaS Term, Provider shall delete Customer Personal Data held by Provider except to the extent necessary to allow Provider to comply with legal or regulatory orders or requirements.

10. Data Protection Impact Assessment. Upon Customer's request, Provider shall provide Customer with reasonable cooperation and assistance as needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the SaaS Software.

APPENDIX 1
TO THE SOFTWARE AS A SERVICE ADDENDUM AND,
AS APPROPRIATE, TO THE STANDARD CONTRACTUAL CLAUSES
AS AND WHEN INCORPORATED INTO THE ADDENDUM

This Appendix forms part of the Addendum and the Standard Contractual Clauses, as and when incorporated therein

Data Exporter

The Data Exporter is the legal entity that is a party to the Addendum and/or the Model Clauses and is the party charged with responsibility for transferring data out of the EEA, as defined in the Addendum.

Data Importer

The Data Importer is the Quest Software entity that is a party to the Addendum and/or the Model Clauses and is the party charged with responsibility for receiving data transferred out of the EEA in accordance with the terms of the Addendum.

Data subjects

Unless provided otherwise by the Data Exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, business partners or other individuals having Personal Data stored in the SaaS Software.

Categories of data

The personal data transferred concern the following categories of data:

- Contact data (which may include first name, last name, e-mail address, phone and fax contact details) to the extent Provider processes any of the foregoing data on behalf of Customer;
- Employment details (which may include company name and address, job title, grade demographic and location data);
- System information required for the provisioning of SaaS Software (which may include user ID and password, computer and domain name, the IP address, GUID number or location of the computer or other device being used)

Customer Personal Data processed hereunder may concern past, present and prospective employees, business partners or other individuals.

Special categories of data will be identified on a case by case basis if and when the parties agree that special categories of data are to be covered by the SaaS Software.

Processing operations

The Customer Personal Data processed by Provider will be subject to the following basic processing activities:

- use of Customer Personal Data to provide access to and benefits of the SaaS Software sold hereunder and to provide assistance and technical support to Customer and/or Data Subjects, as appropriate, all in accordance with the instructions described immediately below;
- storage of Customer Personal Data in data centers;
- back up of Customer Personal Data; and
- computer processing of Customer Personal Data, including data transmission, data retrieval, data access.

Provider may use anonymized data (which is not Customer Personal Data but may be derived from Customer Personal Data) for purposes related to product improvement and development of new Provider products and services.

Purpose and Duration of Data Processing; Data Protection

The purpose of processing of Customer Personal Data by Provider is the provisioning of the SaaS Software pursuant to the Agreement. Customer Personal Data shall be processed during Customer's use of SaaS Software pursuant to the Agreement, and as necessary thereafter to give effect to each and every provision hereunder.

Instructions, Customer and Provider Commitments.

Any description of processing in the Agreement, this Addendum and any related SaaS Software Documentation of Provider shall be considered as instructions by Customer and Provider. Provider will follow written and documented instructions received from Customer with respect to Customer Personal Data unless in Provider's opinion such instructions (1) are legally prohibited or likely to result in a violation of applicable Data Protection Law, (2) require material changes to Provider's SaaS Software, and/or (3) are inconsistent with the terms of the Agreement or Provider's Documentation relating to the SaaS Software sold hereunder. In any such case, Provider shall immediately inform Customer of its inability to follow such instructions.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES
TECHNICAL & ORGANIZATIONAL MEASURES

Statement of Technical and Organizational Measures

Provider will use the appropriate technical and organizational measures set out at the Security Site (as defined in Section 3(b) of the Addendum) in Provider's processing of Customer Personal Data hereunder. Customer agrees that Provider may modify the measures taken in protecting Customer Personal Data so long as it does not materially decrease the overall level of data protection agreed herein.

Exhibit 2 Professional Services Annex

Customer may place orders for consulting services under the terms of the Agreement and this Professional Services Annex. Provider, through its employees, agents and contractors, shall perform the consulting services described in the Services Order Form, Provider Quotation or Statement of Work (each a Services Order and referred to herein as an “SO”) into which the Agreement and this Professional Services Annex (the “**PS Annex**”) is hereby incorporated.

Capitalized terms not otherwise defined in this PS Annex shall have the meaning set forth in the Agreement. In the event of a conflict between this PS Annex and the Agreement, the terms and conditions of this PS Annex shall prevail. The *Payment, Taxes, Termination, Infringement Indemnity, Limitation of Liability, Confidential Information, and General* Sections of the Agreement shall apply accordingly for the consulting services according to this PS Annex, and, as such, each occurrence of “Products” or “Software” in the Agreement shall mean “Services” for purposes of this PS Annex.

Customer acknowledges and agrees that any and all consulting services performed, or to be performed, by Provider for Customer are independent of Customer's purchase and use of the Products and Maintenance Services. Customer further agrees that payment of Products and Maintenance Services according to the Agreement is in no way dependent or in any way associated with the commencement, completion, or delivery of consulting services according to this PS Annex.

1. Definitions.

- (a) “**Activities**” are consulting and/or training services to be performed by Provider pursuant to a Time and Materials SO.
- (b) A “**Description of Services**” or “**Services Offering Description**” is a document incorporated into the SO by reference which contains a description of the planned Activities for a Time and Materials SO or the Project Deliverables for a Fixed Price SO (a “**DOS**” or “**SOD**”, respectively). Unless the SOD is fully set out in the SO, the applicable SOD is as posted at [http:// quest.com/legal/service-offering-descriptions.aspx](http://quest.com/legal/service-offering-descriptions.aspx) on the date the SO is executed by Customer.
- (c) A “**Day**” is eight (8) hours.
- (d) An “**Engagement**” is a set of consecutive Workdays during which Provider shall perform Services at Customer's site.
- (e) A “**Fixed Price SO**” is an SO in which Project Deliverables are provided for a set fee, regardless of the Time required to perform or create them.
- (f) “**Prepaid Time**” is Time for which Customer is invoiced immediately following the full execution of the SO.
- (g) A “**Project Deliverable**” is a discrete task to be completed or item to be created as part of a Fixed Price SO.
- (h) “**Services**” means Activities or Project Deliverables.
- (i) “**Time**” is the quantity of Days or hours stated in a T&M SO.
- (j) A “**Time and Materials SO**” or “**T&M SO**” is the SO in which Activities are provided on a per-hour or per-Day basis.
- (k) A “**Workday**” is a calendar day during which Provider performs Services.

2. Process.

(a) **Purchase Orders.** Except as otherwise stated in the SO, Provider shall process the SO upon receipt of Customer's purchase order (“**PO**”) for the Services 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 the estimated total fees are over twenty-five thousand dollars (\$25,000.00) or if Customer confirms in writing that it does not issue PO's for services such as those being provided by the SO or for reimbursable travel and living expenses.

(b) **Resource Assignment.** The project team shall be assigned following Provider's receipt of the SO executed by Customer and Customer's PO (if required). The Services shall start upon mutual agreement of the parties. Provider shall be liable to Customer for the acts and omissions of its contractors (if any) that perform Services under the SO.

(c) **Rescheduling.** Unless stated otherwise in the SO, if Customer cancels or reschedules an Engagement less than ten (10) days before it is scheduled to begin, it shall (a) for a T&M SO, pay Provider a cancellation fee equal to three (3) Days of Activities or forfeit three (3) Prepaid Days of Activities (as applicable) or (b) for a Fixed Price SO, pay Provider for three (3) Days at Provider's then standard rate per Day. In addition, Customer shall reimburse Provider for any non-refundable travel expenses Provider incurs as a result of the cancellation or rescheduling.

Customer agrees that, except for factors beyond its reasonable control or if the Services planned for an Engagement have

been completed, it shall not cancel an Engagement once it has begun. If Customer cancels the Engagement under a T&M SO once it has begun, for reasons other than those stated in the preceding sentence, it shall pay Provider for the remaining Time in the Engagement or, if applicable, forfeit the applicable Prepaid Time.

(d) **Assumptions and Customer Obligations.** Customer agrees to sign weekly Time and Activity reports to confirm the performance of the Activities and, if training classes are being provided under the SO, sign the course evaluation forms prior to the departure of the on-site trainer. If the weekly Time and Activity reports are not signed by Customer within five (5) days of their delivery or Customer has not submitted a written request for adjustment, they shall be considered to be correct and accepted by Customer. In addition, Customer shall:

- Commit a technical resource, as may be required, to provide Provider with the assistance required to perform the Activities or complete the Project Deliverables.
- 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 or complete the Project Deliverables.
- Provide project team members with suitable business expertise, technical expertise and decision-making authority to ensure efficient project progress.
- On request, provide the Provider project manager with applicable documentation of Customer's current business practices applicable to the Services to be performed under the SO.

(e) **Completion of Project Deliverables.** *This Section 2(e) applies only to Fixed Price SO's.* Following the completion and delivery of the Project Deliverable(s), Provider shall notify Customer in writing that the Project Deliverable(s) have been performed or created and delivered. During the ten (10) day period following the delivery of the Project Deliverable(s) to Customer (the "**Completion Acknowledgement Period**"), if Customer determines that the Project Deliverable(s) have not been completed in substantial conformance with their descriptions in the SO, it shall so notify Provider and describe each non-conformance ("Notice of Non-Conformance"). Upon Provider's receipt of a Notice of Non-Conformance, Provider shall re-perform or re-create the non-conforming Project Deliverables and a new Completion Acknowledgment Period will begin upon delivery of the revised Project Deliverables. If Customer does not provide a Notice of Non-Conformance before the day following the end of the Completion Acknowledgement Period, the Project Deliverables shall be deemed completed. Nothing in this Section 2(e) shall affect Customer's rights under the *Warranty* Section.

3. Time. A T&M SO will contain the Time that Provider has estimated in good faith to be required to perform the Activities described in the T&M SO ("**Estimated Time**"). Provider shall use commercially reasonable efforts to complete the Activities within the Estimated Time; however, Provider does not represent or warrant that it can or shall do so. Provider shall promptly notify Customer if it determines that more Time shall be required to complete the planned Activities and shall not perform Activities beyond the Time without an executed amendment to the T&M SO. Following Customer's email or equivalent approval, Provider may reallocate the Time stated in a T&M SO among the various resources stated in the fees table of the SO, provided such reallocation does not exceed the Estimated Time set forth therein. Activities shall use Prepaid Time, if any, before non-Prepaid Time.

4. Web Based Training

(a) **The Courses.** Each Web-based training course (each, a "**WBT Course**") must be started within twelve (12) months of the date it is purchased and completed within fourteen (14) days after it has been started. If the WBT Course is not started within twelve (12) months of the date it is purchased or is not completed within fourteen (14) days after it has been started, the right to take or complete the WBT Course will expire without right of refund. Each WBT Course may only be taken by one person.

(b) **Course Materials.** The materials provided during the WBT Course are Provider's Confidential Information (as defined in 8 below) and may not be copied, downloaded, "screen scraped", or otherwise duplicated without the express written consent of Provider.

(c) **Warranty.** In place of the warranty stated in the "*Warranty*" Section below, Provider warrants that each Course shall be presented in a technically correct manner and with professional diligence and skill. The foregoing warranty is valid during the WBT Course and for ten (10) days following the completion of the WBT Course (the "**WBT Warranty Period**"). All breaches of the foregoing warranty must be reported to Provider in writing during the WBT Warranty Period. Customer's exclusive remedy and Provider's sole obligation for any and all covered breaches of the foregoing warranty shall be for

Provider, at its option, to allow Customer to apply the amount paid for the nonconforming WBT Course to another Course offered within nine (9) months of the non-conforming WBT Course or refund the fees paid for such WBT Course. For the purposes of this Section a "technically correct manner" means that the technical information provided during the WBT Course was substantially accurate and consistent with the applicable Documentation.

5. Fees.

(a) **Invoicing.** Unless stated otherwise in the SO, payment shall be made in full within thirty (30) days from the date of the applicable invoice. Any amounts payable by Customer that remain unpaid after the due date shall be subject to a late charge equal to one and one half percent (1.5%) of the invoice amount per month from the due date until such amount is paid, or the maximum rate permitted by law, if less. All applicable state and local taxes and travel and living expenses, if any, shall be billed as separate line items.

(b) **Expenses.** Unless the SO indicates that Travel Expenses are included in the rate or otherwise not chargeable, Customer agrees to reimburse Provider for the travel and living expenses reasonably incurred in the performance of each SO ("**Travel Expenses**"). Travel Expenses are estimated in the fees table of the SO 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 Internal Revenue Service approved reimbursement per mile.
- Lodging shall be in standard hotel rooms, unless otherwise agreed to by Customer. Provider shall seek competitive lodging rates and shall attempt to take advantage of any special discounts, which may be negotiated by Customer at local hotels.
- Meals for Services performed in North America, including travel days, shall be billed at sixty dollars (\$60.00) per day; no receipts for meals shall be provided.

Customer's execution of the SO that includes Travel Expenses shall be its written approval for Provider to incur and be reimbursed for Travel Expenses up to, but not exceeding, the amount of the estimated Travel Expenses in the SO. No Travel Expenses shall be charged for Time designated as "Remote" in the SO.

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

(d) **Normal Business Hours, Weekends, and Holidays.** Unless otherwise agreed by the parties, Services shall be performed Monday through Friday 7:00 a.m. to 8:00 p.m. local time ("**Normal Business Hours**"), excluding weekends and holidays. Under a T&M SO, 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 under a T&M SO, 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 Services 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. Under a T&M SO, 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.

6. Intellectual Property. During the performance of the Services by Provider, Provider may create certain intellectual property, including, without limitation, ideas, know-how, techniques, documentation, and software scripts (collectively, the

"IP"). All IP shall be the sole and exclusive property of Provider. Provider retains title and full ownership rights to all such IP under the copyright laws of the United States, Canada or any other jurisdiction or under any federal, state, or foreign laws. Upon Provider's receipt of payment for the Services, Customer shall be granted a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable, non-sublicensable license to use, for the benefit of itself and its Affiliates, the IP for its and its Affiliates' internal business purposes. Notwithstanding the foregoing, nothing contained in this clause shall grant Provider any ownership, use, or distribution rights to Customer's Confidential Information other than as may be required to fulfill its obligations under this Agreement or the SO.

7. Warranty.

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

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

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

8. Term and Termination.

(a) **The PS Annex.** Either party may terminate this PS Annex for any reason, including, but not limited to the other party's uncured breach of the PS Annex or Agreement, with thirty (30) days written notice. If the PS Annex is terminated, it shall remain in force for any SOs which are not completed or are not separately terminated.

(b) **T&M SOs.** A T&M SO may be terminated (i) by Customer for convenience with ten (10) days written notice or (ii) by either party for a breach of the SO by the other party which, if capable of being cured, the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach. If a T&M SO is terminated, Customer shall (x) pay Provider for all fees and expenses incurred up to the effective date of termination and (y) shall not be entitled to a refund of any unused prepaid fees purchased by such SO unless the termination is for Provider's uncured breach.

(c) **Fixed Price SOs.** A Fixed Price SO may be terminated by either party for a breach of the Fixed Price SO by the other party which, if capable of being cured, the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach. If Provider terminates a Fixed Price SO as permitted by the preceding sentence, Customer shall pay Provider for all documented hours Provider has worked on uncompleted Deliverables at Provider's then current hourly rate.

9. Insurance. Provider will maintain at its expense the following insurance during the term of this PS Annex and any SO:

(i) Worker's Compensation Insurance, including occupational illness or disease coverage, and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident.

(ii) Commercial General Liability Insurance, including Products, Completed Operations, Personal Injury Liability and Contractual Liability, covering bodily injury and property damage with a minimum combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate.

(iii) Automobile Liability Insurance covering use of owned, non-owned, and hired automobiles with a minimum combined single limit of \$1,000,000 per accident for bodily injury and property damage.

(iv) Umbrella Liability Insurance with a minimum limit of \$5,000,000 per occurrence and aggregate in excess of the insurance under Provider's employers liability, commercial general liability and automobile liability insurance policies.

(v) Professional Liability / Errors and Omissions insurance with limits not less than \$5,000,000 per claim and aggregate.

Customer will be included as an additional insured on all coverage listed above with the exception of Workers' Compensation and Professional Liability / Errors and Omissions policies as respects insurable liabilities assumed by Provider under this Agreement. Upon Customer's request, Provider shall furnish certificates of insurance evidencing such coverage.

EXHIBIT 3

[KAAS document to be inserted prior to execution]