Software Transaction Agreement

The People's Republic of China excluding the Special Administrative Regions of Hong Kong and Macau, and Taiwan

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS PRODUCT. BY DOWNLOADING, INSTALLING OR USING THIS PRODUCT, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT DOWNLOAD, INSTALL OR USE THIS PRODUCT. IF YOU HAVE A SIGNED AGREEMENT WITH PROVIDER THAT IS SPECIFICALLY REFERENCED IN AN ORDER THAT IS EXECUTED BETWEEN YOU AND PROVIDER, THEN THAT SIGNED AGREEMENT WILL SUPERSEDE THIS AGREEMENT. IF THERE IS ANY DISCREPANCY IN CONSTRUCTION OF THE ENGLISH AND CHINESE VERSIONS OF THIS AGREEMENT OR THERE IS INCONSISTENCY BETWEEN THEM, THE ENGLISH VERSION SHALL PREVAIL.

This Software Transaction Agreement is applicable, and only applicable, in the People's Republic of China excluding the Special Administrative Regions of Hong Kong and Macau, and Taiwan (**"Agreement"**) and is made between you, the Customer ("Customer" or "You") and the Provider, as defined below.

1.　　**Definitions**. Capitalized terms not defined in context shall have the meanings assigned to them below:

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

(b)　　**"Appliance"** means a computer hardware product upon which the Software is pre-installed and delivered.

(c)　　**"Documentation"** means the then current user manuals and documentation that Provider makes available for the Software either through the electronic download of the Software or from the Support Site, and all copies of the foregoing.

(d)　　**"Effective Date"** means the date that Customer accepts the Agreement.

(e)　　**"eStore"** means Provider's online Software ordering system located at https://shop.quest.com/.

(f)　　**"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 and defined in the Product Guide.

(g)　　**"Maintenance Services"** means Provider's then current maintenance and support offering specified in the applicable Order and made available to Customer as stated in the Maintenance Services Section below.

(h)　　**"Order"** is defined in Section 2. Ordering.

软件交易协议

中华人民共和国（不包括香港特别行政区、澳门特别行政区和台湾地区）

请在使用本产品前仔细阅读本协议。下载、安装或使用本产品，即表示您接受并同意本协议的条款和条件。如果您不同意本协议的条款和条件，请勿下载、安装或使用本产品。如果您与提供商签署了一份协议，并且您与提供商之间签署的订单中明确引用该协议，则该已签署的协议将取代本协议。如果本协议的英文版和中文版存在不一致或在解释方面存在任何差异，以英文版为准。

本软件交易协议适用且仅适用于中华人民共和国（不包括香港特别行政区、澳门特别行政区和台湾地区）（本"**协议**"），并且在作为客户的您（"**客户**"或"**您**"）和提供商（定义见下文）之间订立。

1.　　**定义**。 上下文中未定义的术语应具有以下赋予的含义：

(a)　　"**关联方**"是指控制本协议一方、受其控制或与其受共同控制的任何法人实体（只要存在此类控制关系）。

(b)　　"**设备**"是指预装和交付软件的计算机硬件产品。

(c)　　"**文件**"是指提供商通过软件的电子下载或支持网站针对软件提供的当时最新的用户手册和文件，及其所有副本。

(d)　　"**生效日期**"是指客户接受本协议的日期。

(e)　　"**eStore**" 指提供商的在线软件订购系统，网址为 https://shop.quest.com/ 。

(f)　　"**许可类型**"是指在适用订单中指明并在产品指南中定义的软件许可模式（例如，按服务器、按邮箱、按管理用户）。

(g)　　"**维护服务**"是指适用订单中列明并按照下文*维护服务*部分中的规定提供给客户的提供商当时的维护和支持服务。

(h)　　"**订单**"的定义见第 2 条*订购*。

(i) **"Partner"** means a reseller or distributor that is under contract with Provider or another authorized party and is authorized via such contract to resell the Products and/or Maintenance Services.

(j) **"Product"** means the Software and/or Appliance(s) provided to Customer by Provider.

(k) **"Product Guide"** means the document available at https://quest.com/docs/Product_Guide.pdf that contains the Product Terms.

(l) **"Product Terms"** means the terms associated with each License Type and any other terms associated with an individual Product. The Product Terms for Products in a Signed Order or a Governing Quotation shall be as stated in the Signed Order or Governing Quotation. If no Product Terms are stated in the Signed Order or Governing Quotation, if the Order is placed with a Purchase Order ("PO") only, if the Order is placed through the eStore or if the Products are purchased from a Partner, then the Product Terms for such Products shall be as stated in the Product Guide as of the date of the Order or purchase.

(m) **"Provider"** means Quest Software (Beijing) Company Limited with its principal place of business in Regus Beijing Landgent Center, 5/F, Block A, Landgent Center No.20 East Middle 3rd Ring Road, Chaoyang District, Beijing 100022. If an Order is placed through and approved by an Affiliate of Provider, then that Affiliate shall be the Provider under this Agreement.

(n) **"Software"** means any and all software that is provided or made available to Customer under this Agreement as well as any new versions and releases of such software that are made available to Customer pursuant to this Agreement, and, where applicable, all copies of the foregoing. Software includes On-Premises Software and SaaS Software (as defined in Appendix A Software License Terms), along with software that is delivered on an Appliance.

(o) **"Support Site"** means Provider's website defining support, available at https://support.quest.com/essentials/support-guide and https://support.quest.com.

(p) **"Use"** means Customer's installation, deployment, access of or provision of access to, or operation of a Product.

2. **Ordering**. Customer may place an order for Products and/or Maintenance Services through (i) an ordering document signed by Customer and Provider ("Signed Order"), (ii) a Provider quotation referenced on a PO that states that it is governed exclusively by such quotation ("Governing Quotation"), (iii) an order placed through the eStore, (iv) an order placed through a Partner, or (v) a Customer PO submitted to Provider (each of which is referred to as an "Order"). Each Order shall be Customer's irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order and each Order with Provider shall be subject to approval by Provider in writing or by performance. Customer may place Orders for professional services and training under Provider's then current professional services terms.

3. **Software License**. Subject to Customer's compliance with 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 Use the quantities of each item of Software licensed from Provider or a Partner

(i) "***合作伙伴***"是指与提供商或其他授权方签订合同并通过此类合同获准转售产品和/或维护服务的经销商或分销商。

(j) "***产品***"是指提供商提供给客户的软件和/或设备。

(k) "***产品指南***"是指包含产品条款的文件，详见 https://quest.com/docs/Product_Guide.pdf。

(l) "***产品条款***"是指与每种许可类型相关的条款以及与单个产品相关的任何其他条款。已签署订单或适用报价单中的产品的产品条款应与已签署订单或适用报价单中所载的一致。如果已签署订单或适用报价单中未载明产品条款，订单仅以采购订单（"**PO**"）的形式下达，如果订单通过 eStore 下达，或者产品是从合作伙伴处购买的，则此类产品的产品条款应与截至订单或购买之日的产品指南中所载的一致。

(m) "***提供商***"是指凯思拓软件（北京）有限公司，其主要营业地点位于北京市朝阳区东三环中路 20 号乐成中心 A 座 5 层北京雷格斯（乐成中心），邮编：100022。如果订单是通过提供商的关联方下达并由其批准，则该关联方应是本协议项下的提供商。

(n) "***软件***"是指根据本协议向客户提供的任何和所有软件，以及根据本协议向客户提供的此类软件的任何新版本和发行版本，及其所有副本（如适用）。软件包括本地部署软件和 SaaS 软件（定义见附录 A *软件许可条款*），以及在设备上交付的软件。

(o) "***支持网站***"是指提供商定义支持的网站，详见 https://support.quest.com/essentials/support-guide

和 https://support.quest.com。

(p) "***使用***"是指客户安装、部署、访问或提供访问或运行产品。

2. **订购。** 客户可通过 (i) 客户和提供商签署的订购文件（"**签署订单**"），(ii) PO 上引用的提供商报价单（"**适用报价单**"），该 PO 应声明仅受该报价单约束，(iii) 通过 eStore 下达的订单，(iv) 通过合作伙伴下达的订单，或 (v) 提交给提供商的客户 PO（每一项均称为"**订单**"）来订购产品和/或维护服务。每份订单均应是客户购买订单中列明的产品和/或维护服务并付款的不可撤销的承诺，并且每份与提供商的订单均须经提供商书面批准或履行。客户可以根据提供商当时有效的专业服务条款订购专业服务和培训。

3. **软件许可。** 在客户遵守本协议条款的前提下，提供商向客户授予并且客户从提供商接受一项非排他性、不可转让（除非本协议另有规定）且不可再许可的许可，允许客户在与订单中提及的且在附录 A 中

within the parameters of the Product Terms associated with the applicable Software and License Type referenced in the Order and as described in Appendix A (a "License"). Except for MSP Licenses (as defined in Appendix A), Customer shall only Use the Software to support the internal business operations of itself and its worldwide Affiliates.

4.   **Restrictions.** Customer may not, nor allow any third-party to (a) Use the Software except as licensed hereunder, (b) reverse engineer, decompile, or otherwise seek to access the source code of the Software, except to the extent these restrictions are prohibited by applicable law and then only upon advance written notice to Provider, (c) copy, modify, create derivative works of, or remove proprietary notices from the Products or Documentation, (d) resell, sublicense, distribute or rent the Products or Documentation, (e) use the Software to provide a hosted or managed service to third parties, except for MSP Licenses, (f) use the Products or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Provider, or (g) conduct security or vulnerability tests of the Software, interfere with its operation or circumvent any access, licensing or copying restrictions.

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 licensors 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 use 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, or access to, Products shall be by electronic download, access credentials, or FOB Shipping Point.

7.   **Payment and Taxes**. Customer agrees to pay to Provider (or, if applicable, Partner) the fees specified in each Order, Customer will be invoiced promptly following delivery of, or granting of access to, the Products or prior to the commencement of any renewal Maintenance Period or renewed Software term. 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 Signed Order. Provider reserves the right to charge Customer a late penalty of 1.5% per month (or the maximum rate permitted by law, whichever is less) 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. Amounts payable under this Agreement shall be paid in full without set-off or deduction by the Customer, and such amounts shall not be subject to any other limitations or exclusions, whether under this Agreement or otherwise arising in law.

Each party shall be responsible for the taxes payable by that party in connection with the Products and Maintenance Services under this Agreement in accordance with the applicable tax laws in the People's Republic of China.

8.   **Term and Termination.**

(a)   **Termination**.   This Agreement or the Licenses granted hereunder may be terminated by (i) mutual written agreement of Provider and Customer, (ii) either party for a material 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"), and (iii) Provider for a Breach by a Third-Party User or MSP Client.

描述的适用软件和许可类型相关的产品条款的参数范围内，按照提供商或合作伙伴许可的每项软件的数量使用软件（"**许可**"）。除 MSP 许可（定义见附录 A）外，客户只能将软件用于支持其自身及其全球关联方的内部业务运营。

4.   **限制。**   客户不得，也不得允许任何第三方：(a) 使用软件，除非在本协议项下获得许可；(b) 对软件进行逆向工程、反编译或以其他方式寻求访问软件的源代码，除非适用法律禁止这些限制，在这种情况下须事先书面通知提供商；(c) 复制或修改产品或文件、创建产品或文件的衍生作品，或删除产品或文件的专有权声明；(d) 转售、再许可、分发或出租产品或文件；(e) 使用软件向第三方提供托管或管理服务，但 MSP 许可除外；(f) 使用产品或文件创建或增强竞争性产品或服务或将产品或文件用于与提供商竞争的任何其他目的；或 (g) 对软件进行安全性或漏洞测试，干扰软件运行或规避任何访问、许可或复制限制。

5.   **专有性权利。**   客户理解并同意：(i) 产品受版权和其他知识产权法律和条约的保护；(ii) 提供商、其关联方和/或其许可方拥有产品的版权和其他知识产权；(iii) 软件为经许可使用而非出售；(iv) 本协议不向客户授予使用提供商的商标或服务标志的任何权利；以及 (v) 提供商保留未在本协议中明确向客户授予的任何及所有权利，无论是默示还是其他。

6.   **所有权、灭失风险和交付。**   提供商、其关联方和/或其许可方拥有所有软件的所有权。设备的所有权和灭失风险在装运后从提供商转移至客户（除非设备是出租、租赁或借给客户的）。 产品的交付或访问应通过电子下载、访问凭据或 FOB 装运点进行。

7.   **付款和税费。**   客户同意向提供商（或合作伙伴，如适用）支付每份订单中列明的费用。在交付产品或授予产品访问权限之后，或在任何维护续期或软件续期开始之前，将及时向客户开具发票。客户应在每张发票日期或签署订单中指明的此类其他期限（如有）后三十 (30) 天内向提供商全额支付所有到期应付款项。对于客户应向提供商支付的、不存在善意争议的到期未付款项，提供商保留要求客户每月按 1.5%（或者法律允许的最高利率，以较低者为准）支付滞纳金的权利，直至该款项付清为止。本协议项下的应付款项应由客户全额支付，不得抵消或扣除，并且此类款项不得受任何其他限制或除外条款的约束，无论是本协议项下的还是法律产生的。

双方应根据中华人民共和国的适用税法，自行缴纳与本协议项下的产品和维护服务相关的应缴税费。

8.   **期限和终止。**

(a)   **终止。**   在以下情况下，可终止本协议或本协议项下授予的许可：(i) 提供商和客户签订书面协议一致同意终止；(ii) 一方严重违反本协议，且违约方在收到违约通知后三十 (30) 天内未采取令守约方合理满意的补救措施（"**违约**"），由另一方终止；以及 (iii) 第三方用户或 MSP 顾客违约，由提供商终止。

(b) **Effect of License Termination**. Upon termination of this Agreement or expiration or termination of a License for any reason, 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 shall not be entitled to any refund, and (vi) give Provider a written certification, within ten (10) days, that Customer, Third-Party Users and Clients, as applicable, have complied with all of the foregoing obligations.

(c) **Survival**. Any provision of this Agreement that requires or contemplates continued performance 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, Export, Payment, Taxes, Effect of License Termination, Survival, Warranty Disclaimer, 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.

9. **Export.** The Products and Maintenance Services are subject to the export control laws, rules, regulations, restrictions, sanctions and national security controls of the United States, Europe, and other applicable countries and regions ("Export Controls") and each party 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 Use, 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 Use, export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations.

10. **Maintenance Services**. If ordered, Maintenance Services are provided in accordance with Provider's then current Support Guide available on Provider's Support Site, which describes the Maintenance Services, including support offering levels, severity levels, response times, and contact information. The time period during which Customer is entitled to receive Maintenance Services is the **"Maintenance Period"**.

The Support Guide is incorporated in this Agreement and subject to change at Provider's discretion; however, Provider will not materially reduce the level of technical support services provided during a paid support period. As part of the Maintenance Services Provider will (i) make available new releases and corrections of the Software when Provider makes them generally available to its supported customers at no additional license fee, and (ii) provide technical support for issues that are demonstrable in the currently supported release(s) of the Software. Maintenance Services fees are due and payable annually in advance of a support period. Except for non-perpetual Licenses (for which the Maintenance Period is equal to the duration of the License) and unless otherwise stated in the Order, each License includes an initial Maintenance Period beginning on the date of the initial delivery of the Software following an Order and lasting for

(b) **许可终止的效力**。 本协议因任何原因终止或许可到期或因任何原因终止后，向客户授予的适用软件的所有权利应立即终止，并且客户应立即：(i) 停止使用适用软件和文件；(ii) 从所有客户计算机和安装该软件的任何其他设备中删除适用软件的所有副本、安装程序和实例，并确保所有适用的第三方用户和顾客均按上述方式删除；(iii) 将适用软件连同与软件相关的所有文件和其他材料及其所有副本返还给提供商，或销毁此类物品；(iv) 停止使用与适用软件相关的维护服务；(v) 向提供商或适用合作伙伴支付终止日期之前到期应付的所有款项，并且无权获得任何退款；以及 (vi) 在十 (10) 天内向提供商提供书面证明，证明客户、第三方用户和顾客（视情况而定）已遵守所有上述义务。

(c) **继续有效**。 本协议中要求或预期在 (i) 本协议终止，(ii) 许可终止或到期，或 (iii) SaaS 期限到期后继续执行的任何条款，即使在发生此类终止或到期的情况下，也仍可对另一方及其相应继承人和受让人执行，此类条款包括但不限于本协议的*限制*、*出口*、*付款*、*税费*、*许可终止的效力*、*继续有效*、*保证免责声明*、*赔偿*、*责任限制*、*机密信息*、*合规验证和一般规定*部分。本协议或许可的终止不影响终止方在法律项下可能享有的任何其他救济，但须遵守本协议中规定的限制和除外条款。

9. **出口**。 产品和维护服务受美国、欧洲和其他适用国家和地区的出口管制法律、规则、法规、限制、制裁和国家安全管制（"***出口管制***"）的约束，且双方同意遵守出口管制。客户特此同意根据出口管制使用产品和维护服务，并且不会违反出口管制使用、出口、再出口、出售、出租或以其他方式转让产品或其任何副本、部分或直接产品。客户全权负责获得与产品的使用、出口、再出口、出售、出租或转让相关的所有必要许可或授权，并确保遵守此类许可或授权的要求。

10. **维护服务**。 订购后，将根据提供商在提供商支持网站上提供的当时有效的支持指南提供维护服务。支持指南描述了维护服务，包括支持服务水平、严重级别、响应时间和联系信息。客户有权获得维护服务的时间段称为"***维护期限***"。

支持指南纳入本协议中，并且由提供商自行决定更改；但前提是，提供商不会实质性降低付费支持期间提供的技术支持服务的水平。作为维护服务的一部分，提供商将 (i) 免费提供提供商向其受支持客户普遍提供的软件的新版本和修正版本；以及 (ii) 为当时支持的软件版本中出现的明显问题提供技术支持。维护服务费用在支持期之前按年到期应付。除非永久许可（在这种情况下维护期限等于许可期限）外并且除非订单中另有说明，否则每份许可均包括一个初始维护期限，该初始维护期限自下订单后首次交付软件之日算起，持续十二 (12) 个月。

永久许可的维护期限将按照提供商提供的维护服务续订报价单上规定的价格自动续订 12 个月，除非任何一方在至少提前六十 (60) 天发出

twelve (12) months thereafter.

The Maintenance Period for perpetual Licenses will automatically renew for additional terms of 12 months, at the prices stated on a Maintenance Services renewal Quotation provided by Provider, unless the renewal has been cancelled by either party with at least sixty (60) days prior written notice (email is sufficient). Maintenance Services must be ordered for all copies of each licensed Product and may not be purchased for a subset of licenses of a Product only. The procedure and fees for reinstating Maintenance Services for Software after it has lapsed is posted on the Support Site.

书面通知（电子邮件即可）的情况下取消了续订。必须为每个许可产品的所有副本订购维护服务，不得仅为产品的部分许可购买维护服务。软件维护服务失效后的恢复程序和费用已发布在支持网站上。

11. **Warranties and Remedies**. Provider warrants as follows:

(a) **Software Warranty and Remedies**. Provider warrants that, during the applicable Warranty Period, the operation of the Software, as provided by Provider, will substantially conform to its Documentation (**"Software Warranty"**). For On-Premises Software the warranty shall be for ninety (90) days following the initial delivery of the Software pursuant to an Order; and for SaaS Software shall be the duration of the SaaS Term (**"Warranty Period"**). Provided Customer notifies Provider of any breach of the foregoing warranty within the Warranty Period, Provider shall at its option (i) 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 (ii) refund the license fees paid for the applicable nonconforming On-Premises Software in exchange for a return of such nonconforming On-Premises Software or provide a credit of the fees allocable to the period during which the SaaS Software was not operating in substantial conformance with the applicable Documentation. These are Customer's sole and exclusive remedies and Provider's sole obligation for any such breach of the Software Warranty.

(b) **Appliance Warranties**. Appliances are warranted in accordance with the warranty document delivered with the Appliance and/or included on the hardware manufacturers' website.

(c) **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.

(d) **Warranty Disclaimer.** The express warranties and remedies set forth in this section or in a Signed Order or Governing Quotation 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, interoperability, 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.

(e) **High-Risk Disclaimer**. The Products are not fault-tolerant and are not designed or intended for use and may not be used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life support machines, or any other potentially life critical uses (collectively, "**High Risk Activities**"). Provider shall not be liable for any claims by Customer in respect of or which relate directly or indirectly to High-Risk Activities.

11. **保证和救济**。 提供商保证如下：

(a) **软件保证和救济**。 提供商保证，在适用的保证期限内，提供商提供的软件的运行实质上符合其文件（"*软件保证*"）。对于本地部署软件，保证期限为根据订单首次交付软件后九十 (90) 天；对于 SaaS 软件，应为 SaaS 期限（"*保证期限*"）。如果客户在保证期限内将任何违反上述保证的情况告知提供商，提供商可自行选择 (i) 考虑错误的严重性及其对客户的影响后，在合理的时间内纠正软件中导致违反保证的可重现错误或提供变通方案；或 (ii) 退还为相关不合格本地部署软件支付的许可费，并由客户退还此类不合格本地部署软件，或者就 SaaS 软件的运行实质上不符合适用文件的时间段提供费用抵免。对于任何此类违反软件保证的情况，这些是客户的唯一和排他性救济，也是提供商的唯一义务。

(b) **设备保证**。 根据随设备交付的和/或硬件制造商网站上列出的保修文件提供设备保证。

(c) **保证除外条款**。 本节规定的保证不适用于以下任何不符合项：(i) 提供商在尽商业上合理的努力后仍无法重现；(ii) 是因误用适用产品或以不符合本协议或文件的方式使用产品而导致的；或者 (iii) 是因提供商以外的任何人对产品进行修改而引起的。

(d) **保证免责声明**。 本节或签署订单或适用报价单中所述的明示保证和救济是提供商在本协议项下提供的唯一保证和救济。在适用法律允许的最大范围内，所有其他保证或救济均排除在外，无论是明示的还是默示的、口头的还是书面的，包括对适销性、互操作性、任何特定目的适用性、不侵权、令人满意的质量的任何默示保证以及因使用贸易或交易过程或履行而产生的任何保证。提供商不保证产品运行将不间断或没有错误。

(e) **高风险免责声明**。产品不具备容错能力，并且不旨在也不得用于需要故障安全性能的危险环境，例如用于运行核设施、飞机导航或通信系统、空中交通管制、武器系统、生命支持机器或任何其他潜在的生命关键用途（统称为"*高风险活动*"）。提供商不对客户就高风险活动提出的或与高风险活动直接或间接相关的任何索赔负责。

12. **Indemnity.**

(a) **Provider Software Indemnity**. Provider shall indemnify Customer from any claim, suit, action, proceeding brought by a third-party (a **"Third-Party Claim"**) 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 the country to which the Software is delivered to Customer, or misappropriates a trade secret in such country. Provider shall have no obligation hereunder to indemnify Customer as described under this section against any Third-Party Claim resulting from (1) Use of the Software other than as authorized by this Agreement, a Signed Order, or a Governing Quotation; (2) a modification of the Software other than by Provider, (3) Customer's Use of any release of the Software after Provider has provided a non-infringing update at no charge, or (4) Use of the Software in conjunction 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 Third-Party Claim or an injunction, Customer must stop using any Software (the **"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-Premises 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 Third-Party Claim and Infringing Software.

(b) **Export Compliance Indemnity**. Either party shall indemnify the other from and against a Third-Party Claim arising from their own party's violation of the Export Section.

(c) **Customer Data Indemnity.** Customer shall indemnify Provider against a Third-Party Claim arising from its Customer Data responsibilities under the Software as a Service Section of Appendix A.

(d) **Indemnification Obligations**. Indemnification for a Third-Party Claim shall exclusively consist of the following: indemnifying party shall (1) defend or settle the Third-Party Claim at its own expense, (2) pay any judgments finally awarded against indemnified party under a Third-Party Claim or any amounts assessed against indemnified party in any fines or settlements of a Third-Party Claim, and (3) reimburse indemnified party for the reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, it necessarily incurs in responding to the Third-Party Claim. Indemnifying party's obligations are conditioned upon indemnified party (i) giving prompt written notice of the Third-Party Claim to the indemnifying party, (ii) permitting indemnifying party to retain sole control of the investigation, defense or settlement of the Third-Party Claim as long as such settlement shall not include a financial obligation on or admission of liability by indemnified party, and (iii) providing indemnifying party with cooperation and assistance as indemnifying party may reasonably request in connection with the Third-Party Claim.

13. **Limitation of Liability**. Provider, its Affiliates or suppliers shall be liable as follows:

(a) **Liability Cap**. Subject to Sections 13(b) and 13(c), the maximum aggregate and cumulative liability of either party under this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed (i) the fees paid and/or owed (as applicable) by Customer for the

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12. 赔偿。

(a) **提供商软件赔偿。** 对于第三方因下述理由而提起的任何索赔、诉讼、起诉、法律程序（"**第三方索赔**"）：软件直接侵犯在提供商授权客户使用软件的国家/地区（包括软件交付给客户的国家/地区）可强制执行的任何专利、版权、商标或其他专有权，或盗用该国家/地区的商业秘密，提供商应向客户做出赔偿。对于由以下原因导致的任何第三方索赔，提供商在本协议项下没有义务按照本节规定向客户做出赔偿：(1) 将软件用于本协议、签署订单或适用报价单授权以外的目的；(2) 提供商以外的其他方对软件进行修改；(3) 在提供商免费提供非侵权更新后，客户使用软件的任何发布版本；或 (4) 将软件与非由提供商提供的其他产品、服务或数据一起使用（如果没有这种使用就不会发生侵权）。如果由于第三方索赔或禁令，客户必须停止使用任何软件（"**侵权软件**"），提供商应自费决定：(1) 为客户获得继续使用侵权软件的权利；(2) 用具有同等功能的非侵权产品替换侵权软件；(3) 修改侵权软件使其不再侵权；或 (4) 终止侵权软件的许可，并且 (A) 对于本地部署软件，接受退回的侵权软件并退还为侵权软件支付的许可费（按在下订单后首次交付此类软件之日起六十 (60) 个月的期限按比例计算），或 (B) 对于 SaaS 软件，终止客户访问和使用侵权软件的权利，并按比例退还客户为此类软件预付的任何许可费中的未使用部分。本节规定了提供商对第三方索赔和侵权软件负有的全部责任及其唯一和排他性的赔偿义务。

(b) **出口合规赔偿。** 任何一方应赔偿另一方因自身违反*出口*部分规定而引起的第三方索赔。

(c) **客户数据赔偿。** 根据附录 A 的*软件即服务*部分，客户应就因其客户数据责任而产生的第三方索赔向提供商做出赔偿。

(d) **赔偿义务。** 第三方索赔的赔偿应仅包括以下内容：赔偿方应 (1) 自费为第三方索赔提供辩护或寻求和解；(2) 支付第三方索赔案中最终对受偿方裁定的任何判决金额或在第三方索赔的任何罚款或和解中针对受偿方评估的任何金额；以及 (3) 补偿受偿方的合理管理成本或费用，包括但不限于合理的律师费（律师费是回应第三方索赔时必然产生的费用）。赔偿方的义务取决于受偿方是否 (i) 及时向赔偿方发出第三方索赔的书面通知；(ii) 允许赔偿方保留对第三方索赔的调查、辩护或和解的唯一控制权，前提是此类和解不包括受偿方承担财务义务或承认责任，以及 (iii) 向赔偿方提供赔偿方就第三方索赔可能合理要求的配合和协助。

13. **责任限制。** 提供商、其关联方或供应商应承担以下责任：

(a) **责任上限。** 在遵守第 13(b) 条和第 13(c) 条的前提下，任何一方在本协议项下的最大总责任和累积责任，无论是因违约、侵权（包括疏忽）、违反法定义务还是其他原因引起的，均不超过 (i) 客户为违约

Products that are the subject of the breach; or (ii) for Maintenance Services or a Product subject to recurring fees, the liability shall not exceed the amount paid and/or owed (as applicable) for such Maintenance Service or Product during the twelve (12) months preceding the breach.

(b) **Exclusion of Damages**. Subject to Section 13(c), neither party shall be liable for any (i) loss of income, revenue, business, contracts or actual or anticipated profits; (ii) loss of anticipated savings; (iii) loss of goodwill or reputation; (iv) loss of, damage to or corruption of data; (v) recovery of data or programs; (vi) indirect, incidental, special or consequential loss or damage of any kind; howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise.

(c) **Exclusions from Liability Cap**. Nothing in this Agreement shall exclude or limit a party's liability for (i) any amounts due and payable to Provider under this Agreement; (ii) any breach of the Restrictions Section; (iii) indemnity obligations under the Indemnity Section; (iv) death or personal injury resulting from negligence; (v) willful misconduct or fraud; and (vi) any liability to the extent liability may not be excluded or limited as a matter of applicable law.

14. **Confidential Information**.

(a) **Definition. "Confidential Information"** means information or materials disclosed by one party (**"Disclosing Party"**) to the other party (**"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; or (iv) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information.

(b) **Obligations.** The Receiving Party shall (i) not disclose 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

产品支付和/或应支付（视情况而定）的费用；或者 (ii) 对于周期性收费的维护服务或产品，责任不得超过违约前十二 (12) 个月内为此类维护服务或产品支付和/或应支付（视情况而定）的金额。

(b) **损害赔偿的除外条款。** 在遵守第 13(c) 条的前提下，任何一方均不对以下各项负责：(i) 收入、收益、业务、合同或实际或预期利润的损失；(ii) 预期节约损失；(iii) 商誉或声誉损失；(iv) 数据丢失、损坏或破坏；(v) 数据或程序恢复；(vi) 任何种类的间接、附带、特殊或后果性损失或损害；无论是以何种方式发生的，无论此类损失或损害是可预见的还是在双方预期之内的，也无论是因违约、侵权（包括疏忽）、违反法定义务还是其他原因而产生的。

(c) **责任上限除外条款。** 本协议中的任何内容均不排除或限制一方对以下各项的责任：(i) 本协议项下到期应付给提供商的任何款项；(ii) 任何违反*限制*条款的行为；(iii) *赔偿*部分规定的赔偿义务；(iv) 因疏忽造成的死亡或人身伤害；(v) 故意不当行为或欺诈；以及 (vi) 在适用法律不允许排除或限制责任的范围内的任何责任。

14. **机密信息。**

(a) **定义。** "**机密信息**'是指一方（"**披露方**"）向另一方（"**接收方**"）披露的通常不为公众所知的并且由于其特征和性质在类似情况下会被理性人士视为机密的信息或材料，包括但不限于财务、市场营销和定价信息、商业秘密、专有技术、专有工具、知识和方法、软件（呈源代码和/或目标代码形式）、有关软件功能和性能的信息或基准测试结果、提供给客户的任何软件许可密钥，以及本协议的条款和条件。

机密信息不包括以下信息或材料：(i) 在生效日期后非因接收方未经允许披露而被公众广泛获知的；(ii) 在从披露方收到之前接收方在不负有保密义务的情况下已知的；(iii) 接收方从第三方合法获得的（第三方没有违反协议或信托义务）；(iv) 在未访问或使用披露方机密信息的情况下由接收方现在或过去独立开发的。

(b) **义务。** 接收方：(i) 不得向任何第三方披露披露方的机密信息，除非下文第 (c) 款允许，并且 (ii) 应至少采取与保护其自身类似信息相同的谨慎程度来保护披露方的机密信息免遭未经授权的使用或披露，但在任何情况下均不得低于合理的谨慎程度。接收方应及时将任何已知的未经授权使用或披露披露方机密信息的情况通知披露方，并在披露方针对第三方提起的任何诉讼中予以配合以保护披露方的专有权利。为免生疑问，本条适用于双方自生效日期起对所有机密信息的披露，无论是否特别地因一方履行本协议而披露。

(c) **允许的披露。** 尽管有上述规定，接收方可在未经披露方事先书面同意的情况下向其任何关联方、董事、高级职员、员工、顾问、承包商或代表（统称为"**代表**"）披露披露方的机密信息，但前提是这些

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.

代表 (i) 为执行本协议的目的或提供与本协议有关的专业建议而"需要知道"；(ii) 对接收方负有按照至少与本协议中规定的条款一样严格的条款保护机密信息等信息的法律义务；并且 (iii) 已从接收方处获知机密信息的机密性质以及本条中规定的有关披露和使用限制的要求。接收方应就接收其披露的机密信息的任何代表的作为或不作为（如果是接收方实施的此类作为或不作为，将违反本协议）对披露方负责。此外，接收方按照法律或法律程序的要求披露披露方的机密信息不应视为违反本条的规定，前提是接收方事先向披露方发出此类披露通知，除非法院、仲裁小组或其他具有管辖权的法律机构明确禁止这样做。

15. **Data Protection.**

(a) **Data Privacy**. Each party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement, such as but not limited to, the California Consumer Privacy Act as amended by the California Privacy Rights Act, the General Data Protection Regulation, or the UK Data Protection Act, including any implementation act(s) related thereto, or any other applicable laws regulations and other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data (**"Privacy Laws"**). Each party is responsible for obtaining any necessary authorizations and consents prior to disclosing personal data to the other party or to any third-party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either party may use personal data consisting of ordinary business contact data (e.g., name, phone number, email address, etc.) in its capacity as a controller strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the party's business relationship and performance of their obligations under this Agreement.

15. **数据保护。**

(a) **数据隐私。** 就与本协议相关的任何交易而言，双方应遵守适用于个人数据处理的所有法律法规，包括但不限经《加州隐私权法案》修订的《加州消费者隐私法案》、《通用数据保护条例》或《英国数据保护法案》，包括与之相关的任何实施法案，或者与 (a) 隐私和数据安全，以及 (b) 个人数据的使用、收集、保留、存储、安全、披露、传输、处置和其他处理相关的任何其他适用法律法规和其他法律要求（"**隐私法律**"）。任何一方在向另一方或任何第三方披露个人数据之前均有责任获得任何必要的授权和同意。本条中使用的术语"控制者"、"个人数据"和"处理"应具有适用隐私法律中规定的含义。任何一方均可以在正常业务过程中严格按照适用的隐私法律以控制者的身份使用包含正常业务联系数据（例如姓名、电话号码、电子邮箱地址等）的个人数据，但仅限于管理该方的业务关系及履行其在本协议项下的义务。

(b) **General Security**. Details on Provider's information security practices, data incident response policies, technical and organizational measures, and software development security practices are available at: https://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.

(b) **一般安全。** 有关提供商的信息安全做法、数据事件响应政策、技术和组织措施以及软件开发安全做法的详细信息，请访问：:https://www.quest.com/legal/security.aspx （统称为"**安全网站**"）。客户同意，提供商可以修改其安全网站，前提是不会实质性降低提供的整体保护水平。

16. **License Verification.**

(a) **Reporting**. Customer shall maintain and use systems and procedures that allow Customer to accurately and completely track, document, and report Customer's Use of each Product in the quantities and versions used in compliance with the Product Terms and this Agreement and allow Provider to audit the same (an **"Audit"**). Audits may be performed by Provider or its designated agents. 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. 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.

16. **许可验证。**

(a) **报告。** 客户应维护和使用系统和程序，以便客户能够准确、完整地跟踪、记录和报告客户对每种产品（其使用数量和版本符合产品条款和本协议）的使用，并允许提供商对此进行审核（"**审核**"）。审核可由提供商或其指定代理人进行。提供商应在审核开始前至少提前十 (10) 天向客户发出书面通知，并在正常工作时间内进行审核。客户应并应要求其顾客和第三方用户充分配合和协助此类审核，并提供访问适用记录和计算机的权限。

(b) **Confidentiality.** Provider agrees that any Customer information gathered during the performance of an audit shall be Customer's Confidential Information under this Agreement. Customer

(b) **保密。** 提供商同意，在进行审核期间收集的任何客户信息均属于客户在本协议项下的机密信息。客户同意，其不会要求提供商或其

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. Prior to the Audit, Provider shall ensure that its agents are subject to confidentiality obligations at least as protective as those set forth herein.

(c) **Excess Use.** If an Audit indicates that Customer's installations, deployment, access of or provision of access to, or operation of each Product exceeds the quantity of licenses owned or is otherwise not in compliance with the scope of the license granted (**"Overuse"**), then Customer shall pay for all Overuse quantities at Provider's then current list price plus any interest on past due amounts and prior Maintenance Service fees. If the Overuse is more than five percent (5%) of Customer's license entitlements, then Customer shall reimburse Provider for Provider's reasonable cost of performing the Audit. Strict performance by Customer in accordance with this provision is an express condition to all or any licenses granted in this Agreement.

17. **General.**

(a) **Governing Law and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the People's Republic of China, without giving effect to any conflict of laws principles. The parties agree that 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. Any dispute arising from or in connection with this Agreement shall be submitted to the China International and Economic and Trade Arbitration Commission ("CIETAC") for arbitration which shall be conducted in accordance with CIETAC's arbitration rules in effect at the time of arbitration. The arbitration tribunal shall consist of three (3) arbitrators, one appointed by each party and, if either of the parties fails to appoint an arbitrator within the time specified in CIETAC's arbitration rules, the Chairman of CIETAC shall make such an appointment. The third arbitrator shall be appointed by agreement between the parties, and, if the parties fail to jointly appoint the arbitrator within the time specified in CIETAC's arbitration rules, the Chairman of CIETAC shall make such an appointment. The arbitration proceedings shall be held in Beijing and shall be conducted in the Chinese language. The arbitral award shall be final and binding upon both parties. The costs of arbitration shall be borne by the losing party, unless otherwise determined by the arbitration tribunal".

(b) **Assignment**. Neither party may, in whole or part, assign or transfer any of its rights or obligations under this Agreement or an Order, 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 the other party except (i) in connection with a merger, acquisition or sale of all or any portion of such party's assets or business, provided that such party's successor entity or third-party assumes in writing all of such party's obligations under this Agreement and agrees in writing to be bound by this Agreement, and (ii) that Provider may without the consent of Customer assign or transfer the Agreement to Provider's Affiliates. Any attempted assignment or transfer in violation of the foregoing, including but not limited to any transfer of any License that Customer acquired by any means other than under a license purchase contract (for example non-perpetual licenses or SaaS Software), or a transfer of Maintenance Services associated with the transferred Licenses, will be null and void. Notwithstanding the foregoing, the parties agree that Provider may use subcontractors to perform all or part of its obligations hereunder.

(c) **Severability.** If any provision of this Agreement 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

指定代理人就审核签署任何其他保密或禁止披露协议。在进行审核之前，提供商应确保其代理人应遵守的保密义务提供的保护程度至少与本协议中规定的保密义务相同。

(c) **超量使用。** 如果审核表明客户对每个产品的安装、部署、访问或提供访问或运行超出了拥有的许可数量，或者不符合授予许可的范围（"**超量使用**"），则客户应按照提供商当时的标价支付所有超量款项以及任何逾期未付款项的利息和之前的维护服务费用。如果超量使用超过客户许可权利的百分之五 (5%)，则客户应向提供商补偿提供商进行审核产生的合理费用。客户严格按照本条款履约是本协议授予的所有或任何许可的明确前提条件。

17. **一般规定。**

(a) **适用法律和审判地。** 本协议受中华人民共和国法律管辖并据其解释，不考虑任何法律冲突原则。双方同意，《联合国国际货物销售合同公约》和《统一计算机信息交易法》(UCITA) 均不适用于本协议。因本协议引起的或与之相关的任何争议应提交至中国国际经济贸易仲裁委员会（"**贸仲委**"）按照仲裁时有效的贸仲委仲裁规则进行仲裁。仲裁庭应由三 (3) 名仲裁员组成，双方各指定一名，如果任何一方未能在贸仲委仲裁规则规定的时间内指定一名仲裁员，则由贸仲委主席指定。第三名仲裁员由双方协商指定，如果双方未能在贸仲委仲裁规则规定的时间内共同指定仲裁员，则由贸仲委主席指定。仲裁程序应在北京以中文进行。仲裁裁决是终局性裁决，对双方均有约束力。仲裁费用由败诉方承担，仲裁庭另有决定的除外。

(b) **转让。** 任何一方未经另一方事先书面同意，均不得全部或部分让与或转让其在本协议或订单项下的任何权利或义务，无论是自愿的、通过合同、通过法律还是通过兼并（无论该方是存续还是消失的实体）、股票或资产出售、合并、解散、通过政府行为或命令还是通过其他方式，除非 (i) 与该方的全部或任何部分资产或业务的兼并、收购或出售有关，前提是该方的继任实体或第三方以书面形式承担该方在本协议项下的所有义务，并以书面形式同意受本协议的约束，以及 (ii) 提供商可在未经客户同意的情况下将本协议让与或转让给提供商的关联方。任何试图违反上述规定进行的让与或转让，包括但不限于客户通过许可购买合同以外的任何方式获得的任何许可（例如非永久许可或 SaaS 软件）的任何转让，或与所转让许可相关的维护服务的转让，均无效。尽管有上述规定，双方同意，提供商可以选用分包商来履行其在本协议项下的全部或部分义务。

(c) **可分割性。** 如果本协议的任何条款被具有管辖权的法院认定为违反法律，则将在法律允许的最大范围内执行该条款以实现双方的意

to affect 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 any failure or unenforceability thereof. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in 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. Provider may also send operational notices via the SaaS Software, Documentation, or make available on the Support Site.

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

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

(g) **Injunctive Relief**. Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of the 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.

(h) **Force Majeure**. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, and third-party utility or Internet failures. For added certainty, this section shall not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.

(i) **Headings**. Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement 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".

(j) **Legal Fees.** If any legal action is brought to enforce obligations related to payment, compliance verification, or a violation of intellectual property rights, the prevailing party shall be entitled to recover its reasonable attorneys' fees, full costs, and other collection expenses, in addition to any other relief it may be awarded.

图，并且本协议的其余条款继续完全有效。尽管有上述规定，本协议中限制、否认或排除保证、救济或损害赔偿的条款根据双方意图旨在是独立的，并且在失效或不可执行的情况下仍然有效。双方依赖本协议中规定的限制和除外条款来确定是否订立本协议。

(d) **通知。** 本协议项下提供的所有通知均应采用书面形式，并发送至双方的法务部门或任何一方根据本条规定在订单中或以书面形式向另一方指明的其他地址。除非本协议明确允许，否则通知可以专人递送、发送到接收方指定的电子邮箱地址、通过国家认可的快递或隔夜快递服务发送，或通过邮资预付的一类邮件邮寄。所有通知、请求、要求或通信应在专人递送后视为送达，或者如果通过邮寄发送，则在根据本款投递邮件后四 (4) 天视为送达。提供商也可以通过 SaaS 软件、文件或支持网站来发送运行通知。

(e) **披露客户身份。** 提供商可将客户列入其客户名单，并在客户书面同意后，在其营销资料中公布客户选择了提供商。

(f) **弃权。** 本协议要求一方履行的任何义务只能通过另一方授权代表签署的书面弃权书来放弃，该弃权书仅对其中所述的特定义务有效。任何一次弃权或未能执行本协议的任何条款，均不得视为放弃任何其他条款或在任何其他情况下放弃该条款。

(g) **禁令救济。** 双方确认并同意，如果发生严重违反本协议的行为，包括但不限于违反本协议的*软件许可*、*限制*或*机密信息*部分，则守约方有权在不限制其享有的其他权利和救济的情况下立即寻求禁令救济。

(h) **不可抗力。** 如果任何一方因超出其合理控制范围的原因并且并非因其过失或疏忽而无法履行任何义务或服务，包括但不限于天灾、罢工、停工、暴乱、战争行为、流行病、大流行病和第三方设施或互联网故障，则在此期间，该方可免于履行任何义务或服务。为增加确定性，不得通过本条更改、删除或修改双方在本协议项下的任何义务（例如付款），而只能作为延迟履行此类义务的理由。

(i) **标题。** 本协议中的标题仅为方便而设，不影响本协议的含义或解释。本协议不得解释为对一方或另一方有利或不利，而是按照其公平含义进行解释。当本协议中使用"包括"一词时，在每种情况下均应将其解释为"包括但不限于"。

(j) **法律费用。** 如果提起任何法律诉讼以强制执行与付款、合规验证或侵犯知识产权相关的义务，除了可能获得的任何其他救济外，胜诉方还有权收回其合理的律师费、全部成本和其他收款费用。

(k) **Entire Agreement**. This Agreement contains the total agreement between the two parties regarding the subject matter covered herein and supersedes any other agreements, written, oral, expressed, or implied, including any confidentiality agreement between the parties. Unless there is a prevailing signed Agreement between the Parties, all Orders are governed solely and exclusively by this Agreement and any additional or varying terms stated on a Signed Order or a Governing Quotation. In the event of a conflict between the terms of this Agreement and the terms contained in a Signed Order or Governing Quotation, the terms of a Signed Order or Governing Quotation shall control. For all other Orders, the terms of this Agreement shall exclusively control. Neither this Agreement, nor an Order, may be modified or amended except by a writing executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order and Customer agrees that all additional or inconsistent terms that may be contained in any purchase order or other documentation submitted by Customer in connection with an Order are not applicable. Customer agrees that all of Customer's licenses for such Product, regardless of license date, will be governed by the version of the Software Transaction Agreement and applicable Product Terms in effect on the date of the most recent license purchase.

APPENDIX A

SOFTWARE LICENSE TERMS

(1) **On-Premises 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-Premises Software"**), the License term 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-Premises 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 associated primary copy of the On-Premises Software is no longer 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-Premises Software. Each License for On-Premises Software shall only be installed by Customer in the country in which the On-Premises Software is initially delivered to Customer.

(2) **Software as a Service**. If an Order provides Customer with a right to access and use Software installed on equipment hosted by Provider or its suppliers ("SaaS Software"), the License for such SaaS Software shall be granted for the duration of the term stated in the Order (a "**SaaS Term**"), as such SaaS Term may be extended by automatic or agreed upon renewals. If any item of On-Premises 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. "**SaaS Environment**" means the systems to which Customer is provided access in connection with its use of the SaaS Software.

(a) **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 this Agreement by Customer that impacts the availability of the SaaS Software. Provider shall provide reasonable advance notice to Customer of any scheduled maintenance. Provider can limit or

(k) **完整协议。** 本协议包含双方之间就本协议中涵盖的标的达成的整个协议，并取代任何其他书面、口头、明示或默示的协议，包括双方之间的任何保密协议。除非双方签署了效力更高的协议，否则所有订单仅受本协议以及签署订单或适用报价单中规定的任何附加或变更条款的约束。如果本协议的条款与签署订单或适用报价单中包含的条款发生冲突，则以签署订单或适用报价单的条款为准。对所有其他订单而言，完全以本协议的条款为准。除非由双方正式授权代表签署书面文件，否则不得修改或修订本协议或订单。任何其他行为、文件、惯例或习俗均不应视为修订或修改本协议或订单，并且客户同意，客户提交的与订单相关的任何采购订单或其他文件中可能包含的所有附加或不一致条款均不适用。客户同意，客户的所有产品许可，无论许可日期如何，均受此版本的软件交易协议和最近一次购买许可之日有效的适用产品条款的约束。

附录 A

软件许可条款

(1) **本地部署软件。** 如果软件交付给客户用于 (i) 客户在其自有设备上安装和使用；或者 (ii) 由提供商预安装在设备上（"***本地部署软件***"），则许可期限应为永久期限（除非订单上另有说明）并且还应包括以下权利：(i) 制作合理数量的本地部署软件的其他副本，仅用于非生产性存档或被动灾难恢复目的，前提是此类副本保存在安全的位置并且不用于生产目的，除非本地部署软件的相关主副本不再用于生产目的；以及 (ii) 根据合理需要制作和使用文件副本，以支持客户的授权用户使用本地部署软件。本地部署软件的每份许可只能由客户在本地部署软件最初交付给客户的国家/地区安装。

(2) **软件即服务。** 如果订单授权客户访问和使用安装在提供商或其供应商托管的设备上的软件（"***SaaS 软件***"），则应授予此类 SaaS 软件的许可，期限为订单中规定的期限（"***SaaS 期限***"），此类 SaaS 期限可以通过自动续订或商定的续订延长。如果要安装在客户设备上的任何本地部署软件项目是与 SaaS 软件一起提供的，则此类软件的许可期限应为相应的 SaaS 期限，并且客户应及时安装提供商可能提供的此类软件的任何更新。"***SaaS 环境***"是指客户在使用 SaaS 软件时可以访问的系统。

(a) **可用性。** 提供商将尽商业上合理的努力，确保 SaaS 软件每周 7 天、每天 24 小时可用，但定期维护、更新安装、出现提供商无法合理控制的因素、客户未能满足提供商告知客户的任何最低系统要求，以及客户违反本协议对 SaaS 软件的可用性造成影响的情况除外。提供商应就任何定期维护提前向客户发送合理的通知。如果继续使用 SaaS 软件很可能会对 SaaS 软件、其他提供商客户或第三方的权利

suspend Customer's access to the SaaS Software 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 Agreement. If circumstances allow and if reasonably practicable, Provider will give Customer notice so that Customer may seek to promptly avoid the issue and avoid suspension.

(b) **Customer Data**. Customer represents and warrants that it (i) has all rights necessary to use any data, content or materials that Customer (including its users) submits or includes from third-party platforms to the SaaS Environment ("Customer Data") without violating third-party intellectual property, privacy or other rights and grants Provider the right to access, transmit, process and use Customer Data to provide and support the SaaS Software as set out in the Agreement, and (ii) will use industry-standard measures to avoid introducing viruses, malicious code or similar harmful materials into the SaaS Environment. Between the parties, Customer is responsible for the content and accuracy of Customer Data.

(c) **Data Processing**. If Provider processes any personal data on behalf of the Customer through the Customer's use of the SaaS Software then Provider's standard data processing addendum available at www.quest.com/legal/dpa.aspx , or such separate terms as mutually agreed in writing, will apply to such data processing and will become a part of this Agreement. For clarity, any data protection or security agreement related to data processed under this Agreement will always be considered a part of this Agreement and not a stand-alone agreement.

(d) **Cooperation.** Customer shall cooperate with Provider's reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this Software as a Service Section.

(3) **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"** or an **"MSP Client"**). If an Order indicates that an MSP License will be used to support a specific Client, Customer may not Use the MSP License to support any Client other than the Client named on the Order.

(a) **Customer Responsibilities**. 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 Restrictions and Export Sections 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. Customer agrees that the acts and omissions of its Clients in connection with their use of the Software and Documentation shall be deemed the acts and omissions of Customer.

(b) **Client Support**. Customer shall be solely responsible for supporting its Client, including but not limited to, conducting all activities required to install the Software and for providing any training to its Client and any system integrators regarding the installation, use and operation of the Software. Customer will provide Management Services to its Client in a manner that does not degrade the goodwill and reputation of Provider or the Software and will not undertake any

造成损害，需要立即采取行动避免损害，或者客户违反本协议，则提供商可以限制或暂停客户对 SaaS 软件的访问。如果情况允许且合理可行，提供商将通知客户，以便客户可以设法及时避免问题和暂停。

(b) **客户数据。** 客户陈述并保证：(i) 其拥有在不侵犯第三方知识产权、隐私或其他权利的情况下使用客户（包括其用户）从第三方平台向 SaaS 环境提交或纳入的任何数据、内容或材料（"**客户数据**"）的所有必要权利，并授予提供商访问、传输、处理和使用客户数据的权利，以按照本协议规定提供和支持 SaaS 软件；以及 (ii) 其将采取行业标准措施，避免将病毒、恶意代码或类似有害材料引入 SaaS 环境。在双方之间，客户对客户数据的内容和准确性负责。

(c) **数据处理。** 如果提供商在客户使用 SaaS 软件时代表客户处理任何个人数据，则提供商的标准数据保护协议，详见 www.quest.com/legal/dpa.aspx ,或双方书面同意的此类单独条款适用于此类数据处理，并成为本协议的一部分。为明确起见，与本协议项下处理的数据相关的任何数据保护或安全协议始终视为本协议的一部分，而非独立的协议。

(d) **配合。** 客户应配合提供商对 SaaS 环境中断、安全问题以及任何涉嫌违反本*软件即服务*部分规定的行为进行合理调查。

(3) **MSP 许可。** 如果订单表明软件将由客户作为托管服务提供商使用，则应向客户授予一项许可，允许客户使用此类软件和相关文件来提供管理服务（"**MSP 许可**"）。"**管理服务**"包括但不限于客户向其客户（"**顾客**"或"**MSP 顾客**"）提供的应用程序、操作系统和数据库实施、性能调整和维护服务。如果订单表明 MSP 许可将用于支持特定顾客，则客户不得使用 MSP 许可来支持订单上指定的顾客以外的任何顾客。

(a) **客户的责任。** 客户应确保：(i) 每个顾客仅在客户向其提供管理服务的过程中使用软件和文件；(ii) 此类使用受本协议中包含的限制的约束，包括但不限于本协议的*限制*和*出口*部分的规定以及适用订单；以及 (iii) 在提供商或其指定代理人可能进行的任何合规审查期间，每个顾客应配合提供商。客户同意其顾客在使用软件和文件方面的作为和不作为应视为客户的作为和不作为。

(b) **顾客支持。** 客户应全权负责为其顾客提供支持，包括但不限于开展安装软件所需的所有活动，并负责向其顾客和任何系统集成商提供有关软件安装、使用和运行方面的任何培训。客户将以不会降低提供商或软件的商誉和声誉的方式向其顾客提供管理服务，并且不会采取任何会损害或破坏提供商与其客户或潜在客户的关系的行动。客户

action that would impair or disrupt Provider's relationship with its customers or potential customers. Customer will make no representations or warranties related to the Software in excess of Provider's representations or warranties contained in this Agreement. 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.

(c) **Perpetual MSP License Assignment**. In the event Customer acquires a perpetual MSP License, Customer may assign the Software to its Client for the Clients' internal use, provided that Customer obtains Provider's prior written consent for the assignment and the Client agrees to be bound by Provider's then current license agreement. Customer understands and agrees that Customer shall have no right to charge a fee to its Client(s) for such an assignment and that following such an assignment, Customer shall have no further rights to use the assigned Software, and the applicable License shall terminate in accordance with the terms of this Agreement. Any attempted transfer or assignment of the Software to a Client in violation of the foregoing shall be null and void.

(4) **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-Premises Software or from the date that access is granted to the SaaS Software, plus any extensions granted by Provider in writing ("**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 Use 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.

(5) **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 distributed to any third-party.

(6) **Use by Third Parties**. Customer may allow its services vendors, outsourcing providers, and contractors (each, a "**Third-Party User**") to Use the Software and Documentation, 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 User 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.

不得做出超出本协议中包含的提供商陈述或保证之外的软件相关陈述或保证。在与顾客的任何管理服务约定结束时，客户应立即删除安装在其顾客计算机设备上的任何软件或要求顾客删除。

(c) **永久 MSP 许可转让。** 如果客户获得永久 MSP 许可，则客户可以将软件转让给其顾客供内部使用，前提是客户事先获得提供商对转让的书面同意，并且顾客同意受提供商当时有效的许可协议的约束。客户理解并同意，客户无权就此类转让向其顾客收取费用，并且在此类转让之后，客户无权继续使用已转让的软件，并且适用的许可应根据本协议的条款终止。试图违反上述规定将软件转让或让与给顾客的任何行为均无效。

(4) **评估许可。** 如果订单表明客户将出于评估目的使用软件，或者如果是出于评估目的从提供商处获得软件，则应向客户授予一项许可，仅允许客户将此类软件和相关文件用于客户自己的非生产、内部评估目的（"**评估许可**"）。每份评估许可的评估期限最长为三十 (30) 天（自本地部署软件交付之日起或自授予对 SaaS 软件的访问权限之日起），加上提供商书面授予的任何延期（"**评估期限**"）。在评估期限内，评估许可可不收取任何费用，但是，客户应支付可能产生的任何相关运费或税费，以及可能与超出本协议允许范围的使用相关的任何费用。每次发布任何软件项目时，客户将仅获得一份评估许可。尽管本协议中另有规定，客户理解并同意，评估许可按"原样"提供，并且提供商不为评估许可提供保证或维护服务。

(5) **免费软件许可。** 如果客户从提供商网站下载软件的免费软件版本，则此类软件的使用条款应受产品指南中所述的适用免费软件定义的约束（"**免费软件许可**"）。尽管本协议中另有规定，客户理解并同意，免费软件许可 (i) 按"原样"提供；(ii) 提供商不为免费软件许可提供保证或维护服务；并且 (iii) 免费软件许可仅供内部使用，不得分发给任何第三方。

(6) **第三方使用**。客户可以允许其服务供应商、外包提供商和承包商（均称为"第三方用户"）使用软件和文件，前提是客户确保：(i) 第三方用户访问或使用软件和文件受本协议中包含的限制的约束（包括但不限于出口部分中的限制）以及适用的订单；(ii) 在提供商或其指定代理人可能进行的任何合规审查期间，第三方用户配合提供商；以及 (iii) 第三方用户在完成第三方访问或使用本条允许的软件的需求后，立即删除安装在其计算机设备上的任何软件。客户同意其第三方用户与本协议、软件和订单相关的作为和不作为应视为客户的作为和不作为。

(7)   **Open-Source.** Software distributed to Customer (if any) may include third-party open-source software ("**Open-Source**") as listed in the Documentation or by Provider upon request. If Customer elects to use the Open-Source on a stand-alone basis, that use is subject to the applicable Open-Source license and not this Agreement.

(7)   **开源。** 分发给客户的软件（如有）可能包括文件中列出的或提供商应要求提供的第三方开源软件（"**开源**"）。如果客户选择单独使用开源，则该使用受适用的开源许可而非本协议的约束。