

Software Transaction Agreement Number US-STA-18-0038

This Software Transaction Agreement (the “**Agreement**”) is made between Trigg County School District, 202 Main Street, Cadiz, KY 42211 (“**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 user manuals and documentation that Provider makes available for the Software, and all copies of the foregoing.
- (d) “**eStore**” means Provider’s online Software ordering system located at <http://quest.com/shop/>.
- (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) “**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.
- (g) “**Maintenance Services**” means Provider’s maintenance and support offering for the Products as identified in the *Maintenance Services* Section below.
- (h) An “**Order**” is either (i) an ordering document signed by Customer and Provider (“**Signed Order**”), (ii) an order placed through the eStore, (iii) an order placed through a Partner, or (iv) a Customer purchase order (“**PO**”) submitted to Provider. All Orders are governed solely and exclusively by this Agreement and any additional or varying terms stated on (a) a Signed Order or (b) a Provider quotation referenced on a PO that states that it is governed exclusively by such quotation (“**Governing Quotation**”). 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 placed with Provider shall be subject to approval by Provider in writing or by performance.
- (i) “**Overuse**” means Use that is in excess of Customer’s License Entitlements or any other unauthorized Use.
- (j) “**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.
- (k) “**Product Guide**” means the document located at http://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 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 Inc., with its principal place of business located at 4 Polaris Way, Aliso Viejo, CA 92656. If an Order is placed through and approved by an Affiliate of Provider, then that Affiliate shall be the Provider under this Agreement. If the Provider is renamed, then the renamed entity shall become the Provider under this Agreement.
- (n) “**Products**” means the Software and Appliance(s) provided to Customer by Provider.
- (o) “**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.
- (p) “**Use**” means Customer’s installations, deployment, access of or provision of access to, or use of each Product

2. 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 purchased from Provider or a Partner within the parameters of the Product Terms associated with the applicable Software and License Type (the “**License**”). 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

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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) **Intentionally Left Blank**

(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>.

3. 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.

4. 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 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.

5. 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.

6. 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 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 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.

7. 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.

8. Termination.

This Agreement or the Licenses granted hereunder may be terminated (i) by mutual written agreement of Provider and Customer or (ii) by either party for a breach of this Agreement by the other party (or a Third Party User) 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.

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 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, Third Party Users have complied with all of the foregoing obligations.

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, Termination, 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.

9. 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.

10. Maintenance Services.

(a) **Description.** Except as otherwise stated in a Signed Order or Governing Quotation, 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 Order and ends twelve (12) months thereafter unless otherwise set forth below or in the applicable Signed Order or Governing Quotation (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, the Maintenance Period is equal to the duration of the License.

11. 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 pursuant to an 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 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 Signed Order.

(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 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, 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.

12. 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 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 by this Agreement, a Signed Order, or a Governing Quotation, (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.

13. Limitation of Liability. EXCEPT FOR (A) ANY BREACH OF THE *RESTRICTIONS* OR *CONFIDENTIAL INFORMATION* SECTIONS OF THIS AGREEMENT, (B) AMOUNTS CONTAINED IN JUDGMENTS OR SETTLEMENTS WHICH 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)*, AND *EXPORT* 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)*, AND *EXPORT* 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 Third Party Users are entitled to the rights granted under the *Use by Third Parties* Section of this Agreement; otherwise, no third party beneficiaries exist under this Agreement. Provider expressly excludes any and all liability to Third Party Users and to any other third party.

14. Confidential Information.

(a) **Definition.** "**Confidential Information**" means information or materials disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, 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 date that Customer accepts the Agreement (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.

15. 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.

16. 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 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.

17. SaaS Provisions. If Customer places an Order for SaaS Software, the terms and conditions of the Software as a Service Addendum available at <https://www.quest.com/legal/saas-addendum.aspx> (the "**SaaS Addendum**") are incorporated herein and made part of this Agreement.

18. General.

(a) **Governing Law and Venue.** This Agreement shall be governed by, construed in accordance with and enforceable to the extent allowed by the laws of the Commonwealth of Kentucky, 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 Kentucky. 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) **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.

(j) **Equal Opportunity.** Provider 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).

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

(l) **Legal Fees.** If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and other collection expenses, in addition to any other relief it may be awarded.




(m) **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 the applicable Signed Order or Governing Quotation shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in 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 an Order, the terms of a Signed Order or Governing Quotation 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. 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.

The rider to Board of Education of Trigg County, Kentucky Contract is attached hereto as Exhibit 1 and hereby incorporated herein.

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

Quest Software Inc.

By: 
Name: Daniel Rothenberg
Senior Corporate Counsel
Title: Legal Department
Date: 6/15/2018

Customer: Trigg County School District


By: 
Name: Travis Hamby
Title: Superintendent
Date: 7/10/18



Exhibit 1

The rider to Board of Education of Trigg County, Kentucky Contract

USSTA20180525.1



Rider to Board of Education of Trigg County, Kentucky Contract

Vendor Name: Quest Software Inc. hereafter or "Vendor" or "Contractor."

Purchaser: Board of Education of Trigg County, Kentucky, hereafter "Board" or "Purchaser."

Purchaser: Board includes without limitation all schools, organizations, and departments of the

Purchaser: This document may be referred to, without limitation, as "Data Security Rider" or "Rider" or "Document."

General Provisions

Vendor agrees to comply with the provisions included in this Rider to the extent required by the laws of the Commonwealth of Kentucky.

1. The terms of this Rider apply to all current and future agreements of the parties and shall amend and supersede all other agreements. If there is a conflict between the terms of this Rider and current or future agreements of the parties, the terms of this Rider shall control unless the future agreement contains a specific agreement to amend this Rider. No term or provision of any agreement which is inconsistent with the terms of this Rider shall be valid. Performance or action or use, including logging on a website, using software, or "clicking" a button on a computer to indicate agreement to a policy such as a privacy policy or user agreement shall not be sufficient to modify this Rider. The Rider may only be amended by written agreement of the Purchaser and the Vendor. The terms of this Rider shall be incorporated by reference in all current and future agreements of the parties.
2. The terms of this Rider shall be applicable to and incorporated by reference in all current and future agreements between the Vendor and the Purchaser's contractors, agents, employees, and students. Any terms or provisions of agreements between the Vendor and such users which are inconsistent with the requirements of this Rider shall be invalid and unenforceable. For example, a provision of the Vendor's privacy policy for students which provided for indemnification would be unenforceable.
3. Any terms or provisions of agreements between the parties which waive or limit, or attempt to waive or limit the liability of the Vendor to the Purchaser in any respect shall be invalid and unenforceable. Any terms or provisions which provide for or attempt to provide for indemnification by the Purchaser to the Vendor shall be invalid and unenforceable. Any terms or provisions which require the Purchaser to purchase insurance shall be invalid and unenforceable. Any terms or provisions which limit the time in which the Purchaser may bring suit shall be invalid and unenforceable. Any terms or provisions which require the Purchaser to submit to arbitration shall be invalid and unenforceable. The Vendor may disclaim the warranties of fitness for a particular purchase and merchantability, however, all other warranty limitations are invalid and unenforceable. The invalidity of a particular term or provision of an agreement shall not invalidate the entire agreement. If a specific term or provision of an agreement is invalid, the remainder of the agreement shall continue to be valid and enforceable.
4. Any agreements, terms, or provisions between the parties shall be enforceable only to the extent allowed by Kentucky law. This Rider and all agreements of the parties shall be governed by the laws of the Commonwealth of Kentucky without regard to conflicts of law rules. Each party submits to the jurisdiction of the courts, or administrative agencies as applicable, located in the Commonwealth of Kentucky for the purposes of any action, suit or proceeding arising out of or related to this agreement and agrees not to plead or claim that any action, suit or proceeding arising out of or related to this agreement that is brought in such Kentucky courts or such appropriate Kentucky agency has been

brought in an inconvenient forum. Kentucky law may require that claims be brought through the Kentucky Claims Commission and the Board does not waive this requirement. The Board does not waive sovereign immunity or any other limitations on claims or damages against the Board. The Board will not be required to obtain waivers from parents or students unless reasonable and specific requests are made by the vendor. All provisions of this Rider shall survive any termination or expiration of the agreement of the parties and of any and all agreements of the parties. In the event that any provision of this Rider is held by a court of competent jurisdiction to be unenforceable for any reason, the remainder of this Rider shall remain valid and enforceable. The Purchaser may terminate any agreements between the parties one year after the date that the agreement becomes binding by giving thirty (30) days written notice.

5. The Vendor will comply with all applicable Kentucky and Federal law including but not limited to the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) (FERPA), the Protection of Pupil Rights Amendment, 20 U.S.C. 1232h (PPRA), the data protection provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq*) (NSLA), the Child Nutrition Act of 1966 (42 U.S.C. 1751 *et seq*)(CNA), KRS 61.931 *et seq*, KRS 365.720 through KRS 365.734 and the applicable regulations for these statutes. Vendor will sign such documents as are required by the Kentucky Department of Education.

The Vendor and the Purchaser agree that Vendor will adhere to the terms, directions, protocols and requirements set forth above.

Sign: _____
Purchaser: Board of Education of Trigg County, Kentucky
By: Travis Hamby, Superintendent
Date: _____

Sign: _____
Vendor: Quest Software Inc. Daniel Rothenberg
By: (Print Name) Senior Corporate Counsel
Legal Department
Date: 5/30/2018

