

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU PARTICIPATE IN THE QUEST PARTNER CIRCLE PROGRAM. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE DO NOT ENROLL IN THE PROGRAM. IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR ORGANIZATION, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT.**

**TERMS SPECIFIC TO SOME COUNTRIES OUTSIDE THE UNITED STATES ARE AT THE END OF THIS AGREEMENT (“[COUNTRY SPECIFIC TERMS](#)”).**

This Quest Partner Circle Program Terms (the “**Agreement**”) is made between you, the partner (“**Partner**” or “**You**”) and Quest Software Inc., with its location at 4 Polaris Way, Aliso Viejo, CA 92656 or the affiliate of Quest Software Inc. stated in the Country Specific Terms (“**Quest**”) and states the terms and conditions for Your participation in the Quest Partner Circle Program (the “**Program**”).

(1) **Program Benefits.** The benefits of the Program are as stated at Quest Partner Circle portal (the “**Benefits**”). Quest may change the Benefits in its sole discretion; however (a) Quest will notify You at least thirty (30) days prior to any such changes and (b) any Benefits earned prior to the effective date of the changes will be honored.

(2) **Term and Termination.** The initial term of this Agreement shall be one year from the date You indicate Your agreement to it (the “**Initial Term**”). At the end of the Initial Term, the Term will automatically renew for additional one year periods (each, a “**Renewal Term**”) unless the Renewal Term is declined in writing by either party at least thirty days before the start of a Renewal Term. If either party declines a Renewal Term, Quest’s obligation to make payment to Partner for activities that occurred prior to the declined Renewal Term shall continue to be in force.

Notwithstanding the foregoing, Quest may terminate this Agreement for Your uncured breach of the Agreement with ten days written notice. Upon any such termination, all Your rights under the Program shall terminate and no further amounts shall be paid to You following the effective date of the termination.

In the event of any termination or non-renewal, the *Proprietary Rights, Limitation of Liability, Confidential Information, and General* Sections of this Agreement shall survive and remain fully in effect and enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration.

(3) **Not For Resale Software.** You may be provided with “Not for Resale” copies of the Quest software products in object code form (the “**Software**”) as part your participation in the Program. If so, your use of the Software shall be governed by this Agreement and the applicable Software Transaction Agreement posted at <https://www.quest.com/legal/sta.aspx> as of the date you obtain the Software (the “**STA**”). Notwithstanding any rights granted by the STA, the Software may only be used for the purpose of training Your staff and demonstrating the Software to potential customers. The Software is provided as-is with no warranty or Maintenance Services (as defined in the STA) provided.

(4) **Trademarks.** You may use those trademarks used by Quest in conjunction with Your promotion and marketing activities under this Agreement (the “**Marks**”). All such use must (a) be pre-approved by Quest’s marketing department (which will not unreasonably withhold its approval) and (b) in accordance with Quest’s trademark usage guidelines then in effect located at [www.quest.com/legal](http://www.quest.com/legal). You acknowledge Quest’s exclusive right in and to the Marks and agree that use of the Marks shall not give You any right, title or interest therein, and every use thereof shall inure to the benefit of Quest. You will not adopt, use or attempt to register any trademarks or trade names that are confusingly similar to the Marks or in such a way as to create combination marks with the Marks. At Quest’s request, You shall promptly modify or discontinue any use of the Marks if Quest determines that such use does not comply with its then-current trademark usage guidelines.

(5) **Conduct.** In Your customer-facing activities under the Program, You must at all times (a) present Quest and the Quest products in a positive and professional manner, (b) refrain from making any disparaging or negative comments about Quest or the Quest products or make any unfavorable comparisons of the Quest products to other products, and (c) avoid any fraudulent or dishonest activities or statements in connection with this Agreement, the Program, and Quest’s products.

(6) **Proprietary Rights.** Partner understands and agrees that (i) the content of this Agreement, the Quest Partner Circle website, the Program, and the Software (collectively, “**Quest IP**”) are protected by copyright and other intellectual property laws and treaties, (ii) Quest, its Affiliates and/or its licensors own the copyright and other intellectual property rights in the Quest IP, (iii) this Agreement does not grant Partner any rights to Quest IP other than as expressly granted in the Agreement, and (iv) Quest reserves any and all rights, implied or otherwise, which are not expressly granted to

Partner in this Agreement. For the avoidance of doubt, Partner may not copy, disclose to a third party, reuse, or distribute the Quest IP without Quest's prior written consent.

(7) **Non-Solicitation.** During the term of this Agreement, neither party may solicit the employees of the other party for employment. Notwithstanding the foregoing, either party may extend an offer of employment to or hire an employee (i) who responds to a general advertisement, (ii) who approached the hiring party without solicitation, (iii) where employment discussions have occurred prior to the execution of this Agreement, (iv) or are referred to either party by a search firm.

(8) **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, the Program, 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 Partner, 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 Partner 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; 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 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.

Further, Partner agrees that Quest may use Partner information (including personal data) as necessary in the course of its usual business operations and that Quest may disclose such information to its distributors or end-customers to enable warranty or other problem resolution.

(9) **Limitation of Liability.**

Except as may be otherwise set forth in the Country Specific Terms, Quest's liability under this Agreement shall be limited as follows:

QUEST SHALL NOT BE LIABLE TO PARTNER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR 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.

THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF QUEST FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO THE FEES PAID AND/OR OWED TO PARTNER UNDER THIS AGREEMENT OR FIVE HUNDRED DOLLARS (\$500.00), WHICHEVER IS GREATER. PARTNER AGREES THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR PARTNER'S PARTICIPATION IN THE PROGRAM AND THAT SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF PARTNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

(10) **General.**

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

The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

(b) **Assignment.** Except as otherwise set forth herein, Partner 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 Quest. Any attempted transfer or assignment by Partner 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) **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 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 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.

(e) **Disclosure of Partner Status.** Quest may include Partner in its listing of Partners and, upon written consent by Partner, announce Partner's selection of Quest 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 *Proprietary Rights* 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, 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.

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

(j) **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."

(k) **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.

(l) **Order of Precedence.** In the event of a conflict or ambiguity between the terms of this Agreement and the STA, this Agreement will take precedence.

(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 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, a faxed, 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. This Agreement may only be modified or amended 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.

## TERMS SPECIFIC TO COUNTRIES OUTSIDE THE UNITED STATES

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### (1) For Partners in Europe, the Middle East, and Africa:

(a) **"Quest"** shall mean Quest Software International Ltd, with its principal place of business located at City Gate Park, Mahon Point, Cork, Ireland.

(b) If Partner is located in Austria or Germany, the following shall replace Section 9 ("*Limitation of Liability*") in its entirety:

"(i) Quest accepts unlimited liability for acts or omissions based on wilful misconduct or gross negligence. (ii) In case of slight negligence, Quest is only liable in case of a violation of essential contractual duties in a manner that endangers the Agreement's purpose or in case of a violation of duties that are indispensable for the proper execution of the Agreement. Liability for slight negligence is then limited to contract-typical, foreseeable damages. (iv) This provision applies to all claims for damages independent of their legal basis, including tort claims. (v) The following claims remain unaffected from the preceding limitations of liability: claims based on (1) the product liability act; (2) a breach of an express guarantee; (3) personal injury, or death; (vi) These limitations of liability analogous to claims against Quest's Affiliates and suppliers and disbursements."

(c) Section 10(a) shall be replaced in its entirety with:

"If Partner's principal place of business is located in Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Netherlands, Norway, Spain, Sweden, Switzerland or the United Kingdom, then the laws of such country shall apply to and govern this Agreement in relation to any disputes or claims arising hereunder. If Partner's principal place of business is located in any other country in Europe, the Middle East or Africa, then the laws of England shall apply instead for such purposes. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the courts of the country whose laws apply to this Agreement. Each party hereby agrees to submit to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods 1980 (Vienna Convention) shall not apply."

(d) The following shall be added as Section 11:

(11) **Data Protection.** In this clause "Data Protection", the terms "data controller", "data processor", "data subject", "personal data" and "processing" shall be as defined in the European Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("**Directive**") as amended or superseded from time to time and the term "personal data" shall be further defined as referring only to personal data in respect of which the Partner is the data controller. Where Partner is a data controller in respect of any personal data processed under or in connection with this Agreement, it shall comply with the provisions and obligations imposed by the Directive as implemented into applicable national laws. As data controller, Partner confirms that it has obtained all necessary authorizations for lawful processing, prior to passing any personal data (including any End-Customer personal data) to Quest. To the extent Quest processes personal data as a data processor on behalf of Partner under or in connection with this Agreement, Quest shall ensure appropriate technical and organizational measures are in place to safeguard such personal data against accidental or unlawful destruction, or accidental loss, alteration, unauthorized disclosure or access, and shall process the personal data in accordance with Partner's instructions in connection with this Agreement. Quest shall use its reasonable efforts to assist Partner to comply with its obligation, as data controller, to respond to requests by data subjects for access to their personal data, subject to the payment by Partner of Quest's reasonable professional charges for the time engaged by Quest staff in so doing and the provision by Partner of sufficient information to enable Quest to locate the personal data. Partner authorizes Quest to collect, use, store, share and transfer the personal data for the purpose of performing Quest's obligations under this Agreement. Quest may, in the normal course of business, make worldwide transfers of personal data on its corporate systems, to other entities, agents or subcontractors in the same group of companies, or to other relevant business partners who may have incidental access to personal data. When making such transfers, Quest shall ensure appropriate protection is in place to safeguard personal data transferred under or in connection with this Agreement. Quest shall not be liable for any claim brought by Partner or a data subject arising from any action or omission by Quest to the extent that such action or omission resulted from compliance by Quest with Partner's instructions.

(2) **For Partners in Canada:**

(a) "**Quest**" shall mean Quest Software Canada Inc. ("**QSCI**"), with its principal place of business located at 400 Applewood Crescent, Suite 305, Vaughan, ON L4K 0C3, Canada.

(b) Section 10(a) shall be replaced in its entirety with:

**"Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada, excluding its conflicts of laws principles. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the Province of Ontario, Canada. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

(3) **For Partners in the Asia-Pacific region:**

(4) "**Quest**" shall mean either (i) Quest Software International Ltd ("**QSIL**"), with its principal place of business at City Gate Park, Mahon, Cork, Ireland; or (ii) for Partners in the People's Republic of China (excluding Hong Kong, S.A.R., Macau S.A.R. and Taiwan), Quest Software (Beijing) Co., Ltd with its principal place of business at Room 507, Regus Business Center, 6 Floor, Zhong Yu Building, No. 6 Gongti North Road, Chaoyang District, Beijing 100011, China; or (iii) for Partners in Japan,

Quest Software Japan, Ltd. with its principal place of business at Nittochi Nishi Shinjuku Building 13F 6-10-1 Nishi-Shinjuku, Shinjuku-ku, Tokyo 160-0023 Japan.

- (b) Section 10(a) shall be replaced in its entirety with:

**“Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Singapore, without giving effect to any conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the courts located in Singapore. Each party hereby agrees to submit to the jurisdiction of such courts.”

**(4) For Partners in the Latin America region:**

- (a) For Partners based in **Brazil**:

i. (“**Quest**”) shall mean Quest Software Ltda., CNPJ 03.844.620/0001/03, with its domicile located at Nove de Julho, 3.452, conj. 132 São Paulo, SP, Brasil, CEP 01406-000.

- ii. Section 10(a) shall be replaced in its entirety with:

**“Governing Law and Venue.** This Agreement shall be governed by and construed in accordance and governed by the laws of Brazil. The parties elect the courts of the City of São Paulo, State of São Paulo, as exclusive to solve any disputes arising out of this Agreement.”

- iii. The following text shall be added at the end of Section 9 **“Limitation of Liability”**:

“The limitations above shall be applied to the maximum extent permitted by applicable law.

The parties acknowledge that this provision reflects an agreed allocation of the risks between the parties, that the foregoing limitations are an essential element of this Agreement and that in the absence of such limitations, the terms and conditions set forth in this Agreement would be substantially different, in a manner that parties would not even have entered into this Agreement.”

- (b) For Partners based in **Mexico**:

i. (“**Quest**”) shall mean Quest Software Mx, S.de R.L. de C.V. with its principal place of business located at Avenida Patriotismo 229 Piso 8, Oficinas 322, 323 y324, Col. San Pedro de los Pinos, Del. Benito Juarez, CDMX CP 03800.

- ii. Section 10(a) shall be replaced in its entirety with:

**“Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Mexico, without giving effect to any conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the competent courts located in Mexico City. Each party hereby agrees to submit to the jurisdiction of such courts expressly waiving any other jurisdiction that may correspond to them pursuant to their current or future domiciles or for any other reason.”

- iii. The following shall be added as Section 11:

**“(11) Data Protection.**

(a) The parties shall comply with all data protection laws with respect to personal data of the parties (or end-customers) that is in possession of the other party.

- (b) As a data controller, Partner confirms that has obtained all necessary authorizations for the lawful processing, prior to transmitting personal data to Quest. To the extent that Partner processes personal data as a data processor in connection with this Agreement, Partner shall guarantee that the adequate protective measures will be implemented to protect such personal data.
- (c) Partner authorizes Quest to collect, use, store, share and transfer the personal data for the purpose of performing Quest's obligations under this Agreement. Quest may, in the normal course of business, make worldwide transfers of personal data on its corporate systems, to other entities, agents or subcontractors in the same group of companies, or to other relevant business partners who may have incidental access to personal data. When making such transfers, Quest shall ensure appropriate protection is in place to safeguard personal data transferred under or in connection with this Agreement. Quest shall not be liable for any claim brought by Partner or a data subject arising from any action or omission by Quest to the extent that such action or omission resulted from compliance by Quest with Partner's instructions.

(c) For Partners based in **Latin America** other than Brazil and Mexico, the Agreement shall be unmodified.