

Quest Software Inc.
Beta Test Agreement

PLEASE READ THIS BETA TEST AGREEMENT CAREFULLY. BY DOWNLOADING, INSTALLING OR USING THE BETA PRODUCT YOU INDICATE ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE BETA PRODUCT. THIS AGREEMENT SHALL NOT SUPERSEDE ANY OTHER SIGNED AGREEMENT BETWEEN YOU AND QUEST THAT EXPRESSLY GOVERNS THE ORDER FOR THIS PRODUCT.

This Beta Test Agreement (the "Agreement") is made between Quest Software Inc., with its principal place of business located at 4 Polaris Way, Aliso Viejo, California 92656 ("Provider") and you ("Customer") for the purpose of testing the beta software and/or hardware, which for purposes of this Agreement shall be referred to as the "Beta Product". The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement with respect to the subject matter hereof 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 proceeding which may involve the Agreement. This Agreement may not be modified except by a writing executed by both parties hereto.

1. License. In consideration for Customer's agreement to and performance of the Customer Obligations as outlined below, and subject to Customer's agreement to and compliance with the terms and conditions of this Agreement, Provider hereby grants to Customer and Customer hereby accepts from Provider a non-perpetual, non-exclusive, non-transferable and non-sublicensable license to install, execute, access, run, or otherwise interact with the Beta Product during the Beta Test Period (as defined below) for its own internal, non-production evaluation and testing only (the "Beta Test"). Use of the Beta Product shall also be governed by the applicable terms provided at : http://quest.com/docs/Product_Guide.pdf .

2. Beta Test Period. The Beta Test Period is the thirty (30) day period beginning upon Provider's delivery to Customer of the Beta Product, or such other period of time as may be agreed by the parties. However, in no event shall the Beta Test Period continue after Provider withdraws the applicable Beta Product from testing.

3. Customer Obligations. The purpose of the Beta Test is for Provider to obtain information from Customer sufficient to determine the functionality, performance and usability of the Beta Program. Customer agrees to use reasonable efforts to provide Provider with comprehensive information regarding the Beta Products ("Feedback") as soon as possible after Customer learns of such Feedback. Feedback shall include, but is not limited to, all information regarding any problems or defects in the Beta Product encountered by Customer. Customer shall transmit Feedback to Provider in any medium reasonably requested by Provider, including via Provider's Internet customer support page, or by telephone, facsimile, or written or electronic communication. Feedback shall also include simplified test cases sufficient to adequately demonstrate problems or suspected errors Customer encounters with the Beta Product. All Feedback shall become the sole and exclusive property of Provider and may be used by Provider in any way without restriction or obligation to Customer. Provider has an unconditional right to use for any purpose any ideas, concepts, know-how, or techniques resulting from Provider's access to or work with any Feedback or other information exchanged pursuant to this Agreement.

4. Restrictions. Except to the extent expressly permitted by applicable law, and to the extent that Provider is not permitted by that applicable law to exclude or limit the following rights, Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Beta Product. 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 Beta Product or (ii) resell the Beta Product or use the Beta Product in any commercial time share arrangement, in connection with the operation of any nuclear facilities, or for purposes which are competitive to Provider. Each permitted copy of the Beta Product made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Beta Product 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 Beta Product in accordance with the applicable open source licenses.

5. Term And Termination. This Agreement or an individual license granted hereunder may be terminated (a) by mutual agreement of Provider and Customer, (b) by Customer, upon ten (10) days prior written notice to Provider, and (c) by Provider, if Customer breaches this Agreement and fails to cure such breach to Provider's reasonable satisfaction within five (5) days following receipt of Provider's notice thereof. Upon any termination of this Agreement or a license granted hereunder, Customer shall immediately cease use of the applicable Beta Product and certify in writing to Provider within thirty (30) days after termination that Customer has destroyed or returned to Provider such Beta Product and any copies thereof. Termination of this Agreement or a license granted hereunder shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve Customer of its obligation to pay any fees that may have accrued or have become payable by Customer hereunder. The provisions of Sections 5, 7, 11 and 12 will survive termination of this Agreement.

6. Export. Customer acknowledges and agrees that the Beta Product is 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 not to export or re-export, or allow the export or re-export of the Beta Product or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer hereby represents that (i) Customer is not an entity or person to which shipment of the Beta Product is prohibited by the Export Controls; and (ii) Customer will not export, re-export or otherwise transfer the Beta Product 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.

7. Confidential Information. "**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 Disclosing Party's personal data, financial information, marketing information, trade secrets, know-how, proprietary tools, proprietary knowledge and proprietary methodologies. Confidential Information of Provider further includes this Agreement, the Beta Product (in source code and/or object code form), the pricing and discounting offered by Provider to Customer hereunder, information regarding the functionality and performance of the Beta Product, benchmark test results regarding the Beta Product. Additionally, Confidential Information shall include "Individually Identifiable Health Information" (as that term is defined in 45 CFR § 164.501) or "Nonpublic Personal Information" (as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999) that Provider may come into contact with under this Agreement. Confidential Information shall not include information or materials that (a) were, on the date of disclosure, generally known to the public; (b) become generally known to the public other than as a result of the act or omission of the Receiving Party; (c) were known to the Receiving Party without an obligation of confidentiality prior to that party receiving the same from the Disclosing Party; (d) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (e) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information. 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. The Receiving Party shall not (1) make the Disclosing Party's Confidential Information available to any Affiliates, directors, officers, employees, consultants or representatives (collectively, the "**Representatives**") who do not have a "need to know" in order to carry out the purposes of this Agreement; (2) otherwise disclose the Disclosing Party's Confidential Information to any third party without the written consent of the Disclosing Party; or (3) use the Disclosing Party's Confidential Information for any purpose other than as contemplated by this Agreement. The Receiving Party shall inform its Representatives of the confidential nature of the Disclosing Party's Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section and shall disclose the Disclosing Party's Confidential Information only to its Representatives who are legally bound to protect the Confidential Information under terms at least as restrictive as those provided herein. The Receiving Party agrees to 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 be liable to the Disclosing Party for any disclosure or other breach in violation of this Agreement by any of its Representatives. 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.

8. Technical Support. Provider shall have no obligation to support or provide support services to Customer relating to the Beta Product. Provider may, however, make such services available to Customer at its sole discretion, including from time to time making available updates, enhancements and/or modifications to the Beta Product, but Provider is under no obligation to do so. Any such updates, enhancements and/or modifications to the Beta Product shall be subject to the terms and conditions of this Agreement.

9. Beta Product Design and Commercial Availability. The Beta Product is a pre-release of a Provider product that is not generally available for distribution at the time it is shipped to Customer and it is not intended for use in a production environment. The design of the Beta Product may be changed prior to general availability from Provider without notice, and Provider does not guarantee that compatibility of Customer's system can or will be maintained with versions of the Beta Product that may become generally available from Provider. Provider reserves the right to withdraw any Beta Product from Beta Testing and never release it as a commercial product. Provider's plans to market the Beta Product is subject solely to Provider's internal business and technical reviews. Nothing in this Agreement shall be deemed to convey to Customer the right or license to use a commercially released version of the Beta Product or any components thereof. If and when a commercially released version of the Beta Product becomes available, any use by Customer of such shall be subject to a separate written agreement between Customer and Provider and also subject to Customer's payment to Provider of the applicable fees.

10. No Warranty. The Beta Product may not be at the level of performance, compatibility or safety of generally available Provider products. Customer understands and agrees that Provider makes no representation or warranties regarding use of the Beta Product. Customer shall have sole responsibility for adequate protection and backup of its data or equipment used in connection with the Beta Product and Customer shall not claim against Provider for lost data, re-run time, inaccurate input, work delays or lost profits resulting from the use of the Beta Product. THE BETA PRODUCTS AND TECHNICAL SUPPORT, IF ANY, ARE EXPERIMENTAL AND PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. Limitation of Liability. IN NO EVENT WILL PROVIDER BE LIABLE FOR ANY DAMAGES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY CUSTOMER BASED ON A THIRD PARTY CLAIM.

12. General. 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. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Furthermore, the parties acknowledge that terms of the Uniform Computer Information Transaction Act (also known as UCITA) shall not apply to this Agreement, regardless of the states in which the parties do business or are incorporated. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the County of Orange, State of California, United States of America. Each party hereby agrees to submit to the jurisdiction of such courts. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. The Beta Product 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 Beta Product by the U.S. government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted herein. 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. Shipping shall be FOB Shipping Point.