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## **Quest OnDemand Services Agreement**

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING THESE SERVICES, USING THESE SERVICES ON A TRIAL BASIS, OR USING THE ASSOCIATED SOFTWARE. BY PURCHASING THESE SERVICES, USING THESE SERVICES ON A TRIAL BASIS, OR USING THE ASSOCIATED SOFTWARE, YOU INDICATE ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THOSE TERMS APPLICABLE TO SPECIFIC ITEMS OF SOFTWARE THAT ARE STATED IN EXHIBIT 1 TO THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE EXHIBITS, DO NOT PURCHASE THESE SERVICES, DO NOT USE THESE SERVICES ON A TRIAL BASIS, AND DO NOT USE THE ASSOCIATED SOFTWARE.**

This OnDemand Services Agreement (the "Agreement") is made between Quest Software, Inc., with its principal place of business located at 5 Polaris Way, Aliso Viejo, California, 92656 ("Quest") and you, the customer ("You").

### **1. Definitions.**

- (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) "**Billing Period**" means the intervals (e.g., monthly, annually) established during the Purchase Process at which the Services fees are charged to You.
- (c) "**Billing Unit**" means the unit of use (e.g. Enabled User Account, Server) established during the Purchase Process by which the Services Fees are calculated. Billing Unit Definitions are in Exhibit 1 to this Agreement.
- (d) "**Data**" means the information You add to, process, or store with the Software.
- (e) "**Documentation**" means the operating and technical instructions made available to You as part of the Software.
- (f) "**Host**" means the computer equipment on which the Software is installed, which is owned and operated by Quest or its subcontractors.
- (g) "**Purchase Process**" means the online process by which the Services are purchased or use of the Services on a trial basis is obtained, executed by Customer's authorized representative, stating the items of Software included in the Services, and, as applicable, the Billing Unit, and the fee per billing unit per Billing Period.
- (h) The "**Services**" are as described in Sections 2(a), (b), and (c) below.
- (i) A "**Quest Partner**" is the authorized partner of Quest from which you may have purchased the Services.
- (j) "**Software**" means the object code version of any software that is provided to You as part of the Services, including the Utility Software, and any Updates to such software.
- (k) "**Support**" means the support services provided by Quest in connection with Your use of the Software, as further described in Section 2(c).
- (l) "**Updates**" means new versions of the Software.
- (m) "**Utility Software**" means Software provided to You by Quest that You install on Your computers to establish communication with the Software provided as part of the Services or to facilitate the implementation and use of the Services.

### **2. Services.**

The Services are available to You during the Term (as defined in Section 5 below) and are subject to the following:

#### **(a) Software Usage.**

If You purchased the Services, You may (i) access, configure, and use the Software to manage Your internal business operations; and (ii) install, configure, and use the Utility Software on Your computer equipment to the extent necessary to utilize the Services to manage Your internal business operations.

If you have obtained use of the Services on a trial basis, You may use the Services and install, configure, and use the Utility Software on Your computer equipment at no charge for a period of thirty (30) days from the time You agree to the terms of this Agreement (the "Trial Period") for the sole purpose of evaluating the Services and Software for a future purchase. At the end of the Trial Period, Section 5 (Termination) below shall apply unless You have purchased the Services.

(b) **Data Storage.** You may store Data on the Host in connection with Your use of the Software. Quest may periodically make back-up copies of the Data.

(c) **Support and Updates.** As part of all Services, Quest will respond to Your requests regarding software errors and assistance with the installation and use of the Software.

Additionally, if You are using OnDemand Migration for Email ("ODME"):

(a) Quest shall respond to unlimited communications from You that report ODME Software failures not previously reported to Quest by You. Nothing in the foregoing shall operate to limit or restrict Your follow up communication regarding ODME Software failures.

(b) Quest shall respond to requests from Your technical coordinators for assistance with the operational/technical aspects of the ODME Software unrelated to a Software failure; however Quest shall have the right to limit such responses in its sole reasonable discretion.

(c) You shall have access to Quest's Support Web site at <http://support.quest.com> ("Support Portal").

(d) Support Services are available in North American and Europe and are available to You during standard support hours in Your region ("Business Hours") as indicated on Support Portal.

(e) During Business Hours, Quest will respond within one (1) hour to a call from You which reports a critical ODME Software condition (a "Severity Level 1 Problem"). You must use commercially reasonable efforts to provide Quest with the necessary remote access to facilitate the identification and resolution of a Severity Level 1 Problem. Quest's ability to identify and resolve a Severity Level 1 Problem may be delayed without such remote access.

Updates to the Software on the Host will be installed on the Host by Quest. You will receive written notice of the installation of such Updates. Updates to the Utility Software may be made by Quest or You. If You need to make the Updates to the Utility Software, You will be notified to do so.

(d) **Product Specific Terms.** Your use of the Services and the Software may be subject to additional terms and conditions applicable to specific items of Software. These terms and conditions are stated in Exhibit 2 to this Agreement.

### 3. **Billing.**

If you have purchased the Services directly from Quest the Billing Unit, Billing Period, and the fee per Billing Unit/per Billing Period shall each be as agreed to during the Purchase Process. During the Purchase Process, You will select to either (i) issue a purchase order to Quest and pay the Quest invoice (by "Invoice") or (ii) make payment by credit card. If You choose to pay by Invoice, payment shall be due within thirty (30) days of the invoice date. Any amounts payable to Quest by Customer that remain unpaid after the due date shall be subject to a late charge of 1.5% of the invoice amount per month from the due date until such amount is paid, or the maximum rate permitted by law if less. If you choose to pay by credit card, You agree to indemnify and hold Quest harmless for any damages, claims, or losses it may incur in connection with Your use of a credit card to pay for the Services, including but not limited to processing fees for any rejected credit card charges.

If you have purchased the Services from a Quest Partner, the Purchase Process shall be between You and the Quest Partner and shall establish the Billing Unit, Billing Period, and the fee per Billing Unit/per Billing Period. Payment for the Services shall be made to the Quest Partner.

### 4. **Warranties**

(a) Quest warrants that (i) the Software will operate in substantial conformance with the applicable Documentation and (ii) Quest will make commercially reasonable efforts to make the Services available to You twenty four hours a day, seven days a week except for scheduled maintenance, the installation of Updates, those factors that are beyond the reasonable control of Quest, and Your failure to meet any minimum system requirements communicated to You by Quest. Notwithstanding the foregoing, if you have obtained the Services on a Trial basis, although Quest will make reasonable efforts for the Software to operate in substantial conformance with the applicable Documentation and to make the Services available to You during the Trial Period, the Services provided on a trial basis are provided as-is, with no warranties of any kind, express or implied.

(b) Your sole and exclusive remedy and Quest's entire liability for any breach of the warranty stated in Section 4(a)(i) shall be for Quest to provide a correction or reasonably acceptable workaround for the non-conformance within a reasonable time considering the severity of the error and its effect on You or, at Quest's option to reduce the Services fees proportionately to the amount of time the Software was not operating in substantial conformance with the applicable Documentation.

- (c) Your sole and exclusive remedy and Quest's entire liability for any breach of the warranty stated in Section 4(a)(ii) shall be for Quest to reduce the Services fees proportionately to the amount of time the Services were unavailable for use as a result of the breach.
- (d) You warrant that (i) the billing and contact information, including, but not limited to Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator is complete, truthful, and accurate; (ii) You will update all such information within thirty (30) days of any changes; (iii) You have the legal right to use and store the Data in connection with the Service; (iv) that any credit card or other electronic payment method You used or designated during Purchase Process is kept current and accurate; and (v) You will not attempt to access or discover any information on the Host which is not Your Data or which is not provided to You as part of the Services. You agree to be fully liable to Quest for any breach of these warranties and to indemnify and Quest hold harmless from any damages, expenses, or claims by third parties arising from the breach of these warranties.
- (e) THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN SECTION 4(a) ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED TO YOU BY QUEST FOR THE SERVICES AND SOFTWARE. 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.

**5. Term and Termination**

- (a) The Agreement will be in effect for one year from the date of the completion of the Purchase Process unless terminated as stated or permitted herein. Then, the Agreement will automatically renew for additional one year terms (collectively, the Term") unless You or Quest notify the other in writing at least sixty days prior to any such renewal of its intent to terminate the Agreement.
- (b) You may terminate this Agreement at any time for any reason with ten days prior written notice to Quest, however such a termination will not entitle You to any refund of fees You have paid or which You are obligated to pay under Section 3.
- (c) You and Quest may terminate the Agreement for the other party's material breach of the Agreement which remains uncured for thirty days following the breaching party's receipt of written notice of the breach.
- (d) On or before the effective date of any termination of this Agreement, You must stop using the Services and Software and de-install any Utility Software that may be installed on Your equipment. Upon Your request following a termination of this Agreement, Quest shall return the Data to You. However, Quest shall delete all Your Data thirty (30) days following the effective date of any termination of this Agreement.

**6. Your Obligations**

- (a) You must use and configure the Software only in a manner consistent with the Documentation.
- (b) You must install Updates to the Utility Software within ten (10) days of receipt of Quest's written notice of the release of such Updates
- (c) You must ensure that only those personnel who are technically competent in the Software contact Quest for Support.
- (d) You are solely responsible for collecting, inputting and updating all Data stored on the Host, and for ensuring that the Data does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious.

**7. Restrictions.**

- (a) Except to the extent expressly permitted by applicable law, and to the extent that Quest is not permitted by that applicable law to exclude or limit the following rights, You may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Software. In addition, You may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Software or any part thereof, or (ii) resell the Software or Services or use the Software or Services in any commercial time share arrangement, in connection with the operation of any nuclear facilities, or for purposes which are competitive to Quest.
- (b) The rights granted in Section 2 are the only rights granted to You with respect to the Services and Software. Quest reserves any and all rights, implied or otherwise, which are not expressly granted to You. You understand and agree that (i) the Software and Services are protected by copyright and other intellectual property laws and treaties, (ii) Quest and/or its suppliers own the title, copyright, and other intellectual property rights in the Software and Services, (iii) the use of the

Software is being provided as a service and the Software is not being sold, and (iv) this Agreement does not grant You any rights to Quest's trademarks or service marks.

8. **Nondisclosure.** "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. Confidential Information includes, without limitation, this Agreement, the Software, the Services, personal data, source code, object code, information regarding the functionality and performance of the Software, benchmark test results regarding the Software, Software usage keys, trade secrets, financial information, marketing information, customer information, know-how, proprietary tools, proprietary knowledge or proprietary methodologies. 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 Quest may come into contact with while performing the Activities.

Confidential Information shall not include information or materials that (a) were, as of the effective date of this Agreement generally known to the public; (b) become generally known to the public after the effective date of this Agreement 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 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 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 any Confidential Information to any third party without the written consent of the Disclosing Party; or (3) use 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 Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section and shall disclose 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 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 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 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.

9. **Personal Data.** You hereby acknowledge and agree that Quest's performance of this Agreement may require Quest to process, transmit and/or store Your personal data or the personal data of Your employees and Affiliates. By submitting personal data to Quest, You agree that Quest and its Affiliates may process, transmit and/or store personal data in any of the countries in which Quest and its Affiliates conduct business. You acknowledge that such offices may be located in countries outside of the European Economic Area. Quest agrees that it will transfer personal data only to the extent necessary for, and for the sole purpose of, enabling Quest to perform its obligations to You under this Agreement, and hereby affirms that Quest currently abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data from the European Union.

10. **Limitation of Liability.** EXCEPT FOR (A) AMOUNTS CONTAINED IN FINAL JUDGMENTS OR SETTLEMENTS WHICH QUEST IS LIABLE TO PAY UNDER SECTION 11 (*INFRINGEMENT CLAIMS*), (B) YOUR BREACHES OF SECTION 4(D) (*WARRANTIES*), (C) EITHER PARTY'S BREACH OF SECTION 8 (*NONDISCLOSURE*), (D) YOUR BREACHES OF THE WARRANTY STATED IN SECTION 4(F) (*WARRANTIES*), AND (E) YOUR BREACHES OF SECTION 7 (RESTRICTIONS), IN NO EVENT WILL EITHER PARTY OR THEIR AFFILIATES, SUBCONTRACTORS, OR ANY OF THE LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES OF ANY OF THE FOREGOING BE LIABLE TO THE OTHER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE), WHETHER FORESEEABLE OR UNFORESEEABLE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

EXCEPT FOR (A) QUEST'S OBLIGATIONS UNDER SECTION 11 (*INFRINGEMENT CLAIMS*), (B) YOUR BREACHES OF SECTION 4(D) (*WARRANTIES*), (C) YOUR BREACHES OF SECTION 7 (RESTRICTIONS), AND (D) EITHER PARTY'S BREACHES OF SECTION 8 (*NONDISCLOSURE*), EITHER PARTY'S CUMULATIVE LIABILITY FOR

DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO NO GREATER THAN THE AMOUNT OF MONEY PAID AND PAYABLE TO QUEST OR THE QUEST PARTNER BY YOU UNDER THIS AGREEMENT.

**11. Infringement Claims**

Quest will at its own expense defend or settle any claim, suit, action, or proceeding brought against You by a third party to the extent it is based on an allegation that the Software or Services provided hereunder directly infringes any United States patent, copyright, trademark, trade secret or other proprietary right (a "Claim"). Additionally, Quest shall pay any judgments finally awarded against You under a Claim or any amounts assessed against You in any settlements of a Claim, and Your reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees that You necessarily incur in responding to the Claim. Quest's obligations under this Section 11 are conditioned upon You (i) giving prompt written notice of the Claim to Quest; (ii) permitting Quest to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing Quest with such cooperation and assistance as Quest may reasonably request from time to time in connection with the investigation, defense or settlement of the Claim.

Quest shall have no obligation hereunder to defend You against any Claim (a) resulting from use of the Software or Services other than as authorized in this Agreement, (b) resulting from a modification of the Software or Services other than by Quest, or (c) to the extent the Claim arises from or is based on the use of the Software or Services with other products, services, or data not supplied by Quest if the infringement would not have occurred but for such use. This Section 11 states the entire liability of Quest, and Your sole and exclusive remedy, with respect to a Claim.

**12. Export.** The Services and Software 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"). You hereby agree that Your use of the Services and the Software will comply with the Export Controls at all times during the Term.

**13. Assignment.** You shall not assign this Agreement (by operation of law or otherwise) without prior written consent of Quest and any purported attempt to do so will be null and void.

**14. General.**

(a) 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 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. 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.

(b) 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 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.

(c) All notices, requests, demands or communications required or permitted hereunder, including but not limited to billing contact information, shall be in writing, delivered personally, sent by facsimile or e-mail, or mailed by first class mail, postage prepaid, addressed to the legal department of the respective party or to such other address as shall be specified in writing by either of the parties to the other in accordance with this Section. All notices, requests, demands or communications shall be deemed effective upon personal delivery or four (4) days following deposit in the U.S. mail in accordance with this paragraph.

(d) Quest may include You in its listing of customers and, upon Your written consent, announce Your selection of Quest in its marketing communications.

(e) 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.

(f) Each party acknowledges and agrees that in the event of a material breach of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

- (g) 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. Nothing in the foregoing shall be deemed to relieve You of Your obligation to pay fees owed under this Agreement.
- (h) 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).
- (i) Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."
- (j) Quest shall, at its own expense, comply with all federal and state laws, and statutes and regulations applicable to businesses which provide onsite consulting and training services for commercial software products.
- (k) Each party is acting as an independent contractor under this Agreement and nothing contained herein shall be construed to create or imply any agency, joint venture, partnership, principal-agent or employment relationship between the parties. Neither party's employees, agents, or consultants will be considered under any circumstances to be employees, agents or consultants of the other party.

This Agreement and the terms of the applicable Purchase Process (if purchased from Quest) contains the entire agreement between the parties regarding the subject matter hereof and supersedes any and all other agreements and communications, written or oral, expressed or implied.

**EXHIBIT 1**  
**Billing Unit Definitions**

An **“Enabled User Account”** means each account in the domain(s) managed by the Software, including but not limited to users' logon accounts, secondary accounts tied to users, administrative accounts, service accounts, test accounts, and iNetOrgPerson objects.

A **“Server”** means each computer on which the Software is installed and used during the course of a Billing Period.

A **“Managed Server or Workstation”** is a computer which sends Windows event log data to be managed by the Software.

A **“Migrated Mailbox”** is an email mailbox migrated to from one email platform to another using the Software.

**EXHIBIT 2**

**Terms Applicable to Specific Software**

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<b>Software</b>	<b>Terms</b>
Cloud Cost Manager	<p>Please note that the Service and the Software will help You identify and quantify wasted cloud services by comparing what you have allocated (and are paying for) against your actual usage. In addition, the Service and the Software will update You when Your cloud usage appears destined to exceed Your budget. To provide this solution, the Software will require You to provide access to invoices for Your cloud services. The Software will also audit Your cloud usage metrics. In the event You provide the Software with access to Your invoices, the Software will store the data contained in the invoices and will generate reports and email alerts based on its analysis of Your invoices and Your usage metrics. The data that is gathered to generate the analysis will be stored on Quest Software's systems in the U.S.A. and will be used by the Software solely to perform the analysis described herein. In addition, this data may be accessed by Quest employees worldwide in order to provide customer support and/or debug any issues you report the Software. By signing up for this Service and using the Software, you understand, acknowledge and agree that (i) the Software will collect and store certain data regarding Your cloud related invoices and usage metrics, (ii) such data may contain personal or proprietary information, (iii) You have obtained all consents required by Your company and/or local laws to provide this data to Quest for use with the Software, and (iv) You hereby consent to the processing, storage and use of this data for the purposes set forth above, including the processing, storage and use of this data in the U.S.A.</p>