Quest Migration Software (on-premises only) | Quest

1. Definitions

In this section:

(a) **Agreement** means the Software Transaction Agreement between Cenitex and Quest dated on or around 31 July 2016 (ref STA_APJ_20150527), as varied by those parties;

(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 Quest makes available for the Software, and all copies of the foregoing;

(d) **License** means the Software licensed to the Customer in accordance with this Proposal;

(e) **License Type** means the model by which the Software is licensed (e.g., by server. By mailbox, by managed user);

(f) **Maintenance Services** means Quest's maintenance and support offering for the Products;

(g) **Product Terms** means the terms associated with each License Type and any other terms associated with an individual Product;

(h) **Products** means the Software and any Appliance(s) provided to the Customer under this Proposal; and

(i) **Quest** means Quest Software International Limited;

(j) **Software** means the object code version of the software that is provided or made available to the Customer as well as any corrections, enhancements and upgrades to such software that are made available to the Customer, and all copies of the foregoing.

License

If the Software is installed on the Customer's equipment or the Customer is provided access to the Software by Cenitex, then the Customer must ensure that:

(k) it only uses the Software and Documentation as part of the services provided to it by Cenitex under this Proposal;

(l) such use is subject to the restrictions and limitations in this Proposal, including those in clauses 3 and 6;

(m)   it cooperates with Quest during any compliance review that may be conducted by Quest or its designated agent; and

(n)   at the end of its engagement with Cenitex, it will, at Cenitex's request, promptly remove any Software installed on its computer equipment.

2. Restrictions

Unless the exclusions and limitations in this clause are prohibited by law, the 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. In addition, the Customer may not:

(a)   modify, translate, localise, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on, the Products, Documentation or any part thereof;

(b)   resell, sublicense or distribute the Products or Documentation;

(c)   provide, make available to, or permit the use of the Products, in whole or in part, by any third party (except as expressly set forth herein) without Quest's prior written consent;

(d)   use the Products or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Quest;

(e)   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 Quest's prior written consent; or

(f)   perform or fail to perform any act which would result in misappropriation or infringement of Quest's intellectual property rights in the Products or Documentation.

Each permitted copy of the Software and Documentation made by the Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original.

The Customer understands and agrees that the Products may work in conjunction with third party products and the Customer agrees to be responsible for ensuring that it is properly licensed to use such third party products. The terms and restrictions set out in this Proposal shall not prevent or restrict the 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 licenses.

The Customer may not use any license keys or other license access devices not provided by Quest, including but not limited to 'pirate keys', to install or access the Software.

3. Export

The 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. The 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 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; or

(c)   any person or entity to which shipment of Products is prohibited by the Export Controls.

4.   **Compliance Verification**

(a)   The Customer agrees to maintain and use systems and procedures to accurately track, document and report its installations, acquisitions and usage of the Software. Such systems and procedures shall be sufficient to determine if the Customer's deployment of the Software is within the quantities, Product Terms, and maintenance releases to which it is entitled. Quest or its designated auditing agent shall have the right to audit the Customer's deployment of the Software for compliance with the terms and conditions of the Agreement. The Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers.