

The following terms are an example of a subset of the standard Terms Of Service (“TOS”) for the Quest Analytics, LLC (“Quest”) Software and Services, you must consult the Agreement between your organization (“Customer”) and Quest for the governing TOS for you as an End User. Your acceptance of the TOS does not create any new agreement or obligations with Quest, it is an acknowledgement that you have read and agree to abide by the TOS already governing your organization.

Quest reserves the right to monitor and log all user activity to Quest Enterprise Services.

Services and Software

The following provides a description of all the Services and Software modules available to be licensed from Quest, your organization may have licensed all, one, or a subset of the following:

Quest Enterprise Services - Cloud Module Descriptions

- **Data Management Services** may include the following:
 - **NPI Validation** – identifies NPIs in Customer’s database that are not valid, deactivated or missing.
 - **Duplicate Specialty Identification** – identifies providers listed with more than 1 specialty
 - **Multiple Address Identification** – identifies providers who have multiple practice locations
 - **HSD Tables** – export of HSD tables
 - **Medicare Opt-outs** – flags providers who are on the Medicare Opt-out list
 - **OIG Exclusions** – flags providers who are on the Federal OIG list
 - **HPMS Error Triage** – research HPMS upload error
 - **Facility Services Crosswalk** – expands facility services based on Quest source data
 - **Refresh Schedule** – up to weekly refreshes of network data

- **Adequacy Compliance Monitoring Services** - adequacy analysis cloud services provides for ongoing network adequacy compliance monitoring, including:
 - **Trending** - show network adequacy trending across multiple points in time
 - **Gap Age** – identification of network deficiencies and the number of days they have existed

- **Impact Analysis Services** - streamlines the recruitment process by providing the ranked impact of every provider for any and all counties potentially covered by the provider including:
 - **Alternate Prospect Provider Network** – leverage a Customer supplied database to seed the providers to fill gaps (i.e. commercial network) OR
 - **Group Affiliation** – create a special prospect database to allowing targeting by provider group.
 - **Target & Exclude** – allow viewers to target providers from the prospect or market provider lists to evaluate projected adequacy with a provider added. Allow viewer

to exclude providers from the prospect and market lists to track reason for not contracting.

- **Opportunity Analysis Services** – allows Customer to understand the effort needed to expand into new markets and the new business potential that it represents.
- **Client Services** – Monthly web meeting with Customer team to review progress, process, features and capabilities.

Quest Analytics Suite™ - Desktop Edition Descriptions

- **Access Analysis Module** - provides the ability to generate network access analysis reports to assist with health plan selection and design.
- **Disruption Analysis Module** - provides the ability to compare multiple networks and generate network disruption reports.
- **Geocoder Module** - provides the ability to assign latitude and longitude to employee groups, provider groups and user-specified tables with the street-level accuracy.
- **Quality Analysis Module** - provides the ability to incorporate quality outcome transparency to assist with health plan selection, plan design and special projects relating to quality analysis.

GeoAccess Desktop Modules Descriptions

- **DirectoryExpert** – provides the ability to create a paginated directory with print-ready capability, including formatting columns, table of contents, indexes, etc.

Right to Modify Replace or Discontinue. Quest reserves the right to modify, add to, delete, replace or discontinue any of the Software (and associated functions and features), from time to time, in its sole discretion.

Documentation. The Documentation for the Software is located and available at <https://questanalytics.com/support/tutorials>.

Scope of Licenses, Restrictions and Obligations.

- a) Grant of Rights. For the duration of the applicable Subscription Period, and subject to Customer's compliance with the terms of the Master Service Agreement ("MSA"), including Customer's payment obligations, Quest hereby grants, and

Customer hereby accepts, a limited, non-exclusive, non-transferable, non-sublicensable right to access and use within the Territory, the Software and Documentation, (and if applicable, the Quest Data), solely for Customer's internal non-commercial purposes and subject to the terms and restrictions of the MSA. Customer does not acquire under the MSA any other right or license (including any implied licenses) to use the Software, Documentation or Quest Data, except as expressly granted in this Section.

- b) Restrictions on Use. Customer may use the Software (and if applicable, the Quest Data), only for the purposes described in the Schedule or Documentation and within the scope as expressly set forth in the "Grant of Rights" section above. For Software installed on premises, Customer may install and use only the number of copies of the Software for which Licensee has paid the associated Fees. Access to or the license to use of the Software, Quest Data, or the Documentation may be limited or suspended immediately in Quest's reasonable discretion if the terms of this Section are violated. Except as otherwise expressly stated in the applicable Schedule, Customer shall not:
- i. copy, reproduce, modify, adapt, translate, distribute, transmit, download, upload, post, sell, rent, license, sublicense, transfer, mirror, frame, create derivative works of, reverse engineer, decompile or disassemble any aspect of the Software, Quest Data or the Documentation (including, but not limited to, any underlying data), in whole or in part, in any form or by any means, without Quest's prior written permission (in its sole discretion);
 - ii. access or use the Software, Quest Data or the Documentation in connection with provision of any services (including outsourcing services) to third parties;
 - iii. resell, lease, encumber, copy, distribute, publish, exhibit, or transmit the Software (or any part thereof), Quest Data or the Documentation, to any third party, provided, however, Customer may disclose Quest Data to the Centers for Medicare & Medicaid Services or other state or federal regulatory agencies to the extent such disclosure is required by such agencies for the limited purpose of such agencies granting provider network approval (subject to Customer obtaining written assurances from such agencies to maintain confidentiality of such Quest Data and to use it only for granting provider network approvals);
 - iv. use the Software, Quest Data or Documentation in a manner that in material respects, delays, impairs, or interferes with system functionality for other users of the Software, Quest Data or Documentation or that compromises the security or integrity of the Software;
 - v. knowingly enter data through the use of the Software that is threatening, harmful, lewd, offensive, defamatory, or that injures or infringes the rights of others;

- vi. apply systems to extract or modify information hosted through the Software using technology or methods such as those commonly referred to as “web scraping,” “data scraping,” or “screen scraping”; or
 - vii. use the Software, Quest Data or the Documentation, or any part or aspect of them, for any unlawful purpose (including any purpose that may violate or be prohibited by applicable law).
- c) Customer Responsibilities.
- i. Customer has the sole responsibility for installation, testing, security, and operations of facilities, telecommunications, and internet and mobile services, equipment, software and/or other infrastructure necessary for Customer’s use and access of the Software, Quest Data, Documentation or Services, and for paying all associated third-party fees incurred by Customer.
 - ii. Customer is responsible for approving access to End Users, for End Users’ compliance with applicable requirements in this MSA or in any Terms of Service, and for administering, and ensuring that its End Users maintain the confidentiality of, log-in credentials issued to such End Users. Customer is also responsible for providing Quest with written notification within five (5) business days of Customer’s termination of its relationship with any such End User for purposes of ensuring that log-in credentials or access rights are invalidated.
 - iii. Unless otherwise provided in the applicable Schedule or SOW, Customer is solely responsible for installation and implementation of the Software.
 - iv. Customer shall promptly notify Quest upon becoming aware of any unauthorized use of the Software, Quest Data or Documentation, whether by End Users or unauthorized individuals or entities.
 - v. Customer is responsible for ensuring that it does not disclose, provide or make available to Quest (including as part of Customer Data), any protected health information (as defined under HIPAA) or any personal data of any individuals (other than such information relating to healthcare providers as necessary for Quest to perform the Services). Customer acknowledges and agrees that it is solely responsible for complying with all applicable laws, including HIPAA, and state data protection laws.

Confidentiality

- a) Mutual Obligations. The Receiving Party agrees that, unless it has the prior written consent of the Disclosing Party, the Receiving Party will not use or disclose to any third party (other than for the purpose of performing the Services under this MSA) any Confidential Information of the Disclosing Party.
- b) Exceptions. Information will not be deemed Confidential Information hereunder if such information:

- i. is known prior to receipt from the Disclosing Party, without any obligation of confidentiality;
- ii. becomes known to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party;
- iii. becomes publicly known or otherwise publicly available, except through a breach of this MSA; or
- iv. is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

The Receiving Party may disclose Confidential Information of the Disclosing Party pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the Disclosing Party reasonable prior written notice to permit the Disclosing Party to contest such disclosure or to seek an appropriate protective order, and such disclosure is otherwise limited to the required disclosure.

- c) Level of Care. The Receiving Party will maintain the confidentiality of, and agrees to use the same care to prevent disclosure of, the Confidential Information of the Disclosing Party as it employs to avoid disclosure, publication, or dissemination of its own Confidential Information, but in no event less than a reasonable standard of care. The Receiving Party further agrees to use the Disclosing Party's Confidential Information only in connection with and in furtherance of the business transactions contemplated by this MSA. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, directors, officers, affiliates, agents, subcontractors, attorneys, accountants, or professional advisors who have a need to have access to such Confidential Information in carrying out the business transactions contemplated by this MSA ("**Authorized Representatives**"). The Receiving Party will inform its Authorized Representatives of the confidential nature of the Confidential Information and the applicability of this MSA thereto and will obligate and direct its Authorized Representatives to maintain the confidentiality of such Confidential Information and otherwise to observe the terms of this Section 11.
- d) Remedies. The Receiving Party acknowledges that improper dissemination of the Disclosing Party's Confidential Information may cause irreparable damage to the Disclosing Party and agrees that the Disclosing Party will have available to it, in addition to any other remedy provided by law, the right to apply for injunctive relief (without having to post bond) to enforce compliance by the Receiving Party with the provisions of this MSA.

Ownership and Use of Data, Marks and Intellectual Property Rights

- a) Customer Intellectual Property and Data.
 - i. Ownership of Customer Intellectual Property. Quest hereby acknowledges and agrees that as between Quest and Customer, Customer exclusively owns all rights, title and interest in and to Customer Marks and Customer Data

(collectively, “**Customer Intellectual Property**”), and to all intellectual property rights worldwide thereto.

- ii. Right to Use Customer Data for the Services. Customer hereby grants to Quest a non-exclusive, transferable right to use and process Customer Data throughout the Term of this MSA and the applicable Subscription Period(s) under any Schedule or SOW in connection with Quest performing the Services for or on behalf of Customer.
 - iii. Right to Aggregate Customer Data and Create Derivative Works. Customer hereby grants to Quest a non-exclusive, transferable, irrevocable right to use and process Customer Data: (A) for the purposes of aggregating such Customer Data with other data (including but not limited to data from other customers, Public Data, Quest Data or from other sources), including but not limited to provider communications, provider responsiveness to communications, benchmarking, analytics, or other business purposes; and (B) to use Customer Data to create databases, compilations, improvements, enhancements, transformations, or derivative works thereof (such data derivatives, outputs and products created pursuant to this Section herein, collectively, “**Data Derivatives**”).
 - iv. Right to Use Customer Marks. Customer hereby grants Quest the right to use Customer Marks for purposes relating to and in connection with providing the Services. Quest shall not use Customer Marks for any other purpose without Customer’s consent, which shall not be unreasonably withheld and may be provided by e-mail.
- b) Ownership of Quest Intellectual Property. Customer hereby acknowledges and agrees that as between Quest and Customer, Quest exclusively owns all right, title, and interest worldwide in the Quest Marks, the Software (including in all formats, including in source code and object code formats), the Services, the Documentation, the Quest Data, the Data Derivatives (including any derivatives of Public Data), and Submissions, including any and all modifications, enhancements, improvements, transformations or derivative works thereof (collectively, “**Quest Intellectual Property**”), and to all intellectual property rights worldwide thereto. To the extent that Customer has or asserts any rights in any Quest Intellectual Property, Customer hereby irrevocably and in perpetuity assigns to Quest all worldwide rights, title, and interest Customer may have therein.
- c) Customer Submissions. Customer acknowledges and agrees that any and all Submissions (e.g. product enhancement ideas) are submitted without any restrictions on use or expectation of confidentiality. Customer agrees that Quest will exclusively own, and Customer hereby irrevocably assigns to Quest without compensation or further obligation, all rights worldwide now known or hereafter existing to the Submissions. For the avoidance of doubt, Customer agrees that Quest will be entitled to unrestricted use of the Submissions for any purpose

whatsoever, commercial or otherwise, without compensation to Customer, including the right to use, reproduce, modify, adapt, publish, transmit, publicly perform or display, translate, create derivative works from such Submissions.

Breach & Termination

Breach. Upon a material breach of the MSA, the non-breaching party may elect in its sole discretion to terminate (A) this MSA only such that the breaching party cannot enter into any new Schedules or SOWs under this MSA; or (B) this MSA together with any current Schedules or SOWs, if in either case the breaching party shall have failed to cure the breach within ten (10) days after receiving written notice of the breach. For the purposes of this provision, material breach of this MSA includes, but is not limited to:

- A. Customer's breach of its payment obligations;
- B. either party threatening the safety or well-being of any employee or contractor of either party or any third party;
- C. a breach of a party's confidentiality obligations;
- D. use by Customer of the Software, Quest Data or Documentation in excess of the scope of the license or in violation of any of the restrictions on use, as set forth in this MSA; or
- E. a violation of a party's intellectual property rights.

Such right to terminate in accordance with this provision is in addition to and shall not limit or prejudice any other right or remedy available under this MSA, at law, or in equity, except as provided herein.

Effect of Termination.

- a) End of Rights to Software and Services. Upon the expiration or termination of a Schedule or SOW for any reason Quest will have no further obligation to provide the Software, Quest Data, Documentation or Services and Customer will have no further rights to use or access the Software, Quest Data, Documentation or Services under the applicable Schedule or SOW. Customer shall cease any further use or access to such Software, Quest Data (except as otherwise provided in the "Retention of Quest Data" section) or Documentation, as applicable, unless Quest (in its sole discretion) otherwise agrees in writing. Within ten (10) days after termination of this Agreement, Customer shall return to Quest or if return is not feasible, shall destroy all copies of the Software (including any Quest Data, except as otherwise provided in the "Retention of Quest Data" section), and Documentation in Customer's possession, custody or under its control, unless Quest (in its sole discretion) otherwise agrees in writing, and Customer shall certify in writing to Quest that such copies have been destroyed.
- b) Return of Confidential Information. Except as otherwise provided in the "Retention of Quest Data" section, upon the expiration or termination of the MSA, or any Schedule or any SOW for any reason, unless otherwise agreed in writing

(including e-mail), each party shall promptly, at the other party's election, return or destroy

- i. all the other party's Confidential Information that was shared or disclosed in connection with all terminated Schedule(s) or SOW(s) or
 - ii. in the case of a termination of the MSA and all Schedules and SOWs, all Confidential Information, in each case to the extent in its possession, custody or under its control (including copies, recordings, notes, archives, backups and summaries thereof, in all formats).
- c) Retention of Quest Data. Upon the termination of this MSA or any Schedule or SOW under which Customer obtained a license to use and access Quest Data, except in the case where termination is by Quest due to Customer's breach of this MSA or any Schedule or SOW, to the extent the return or destruction of Quest Data is not feasible, Customer may retain and use, after termination of the MSA, or the applicable Schedule or SOW, the latest version of the Quest Data that was provided to Customer by Quest prior to termination of the MSA, or the applicable Schedule or SOW, provided that Customer has paid the applicable fees for access to and use of such version of the Quest Data, and subject to Customer's ongoing compliance with the license terms and restrictions set forth in the Agreement notwithstanding termination of the Agreement. For the avoidance of doubt, Customer acknowledges and agrees that Quest retains exclusive ownership in all right, title, and interest in and to the Quest Data (including all intellectual property rights thereto). Customer shall cease any further use or access to prior versions of the Quest Data. For the avoidance of doubt, Customer shall not have a right to continue to use any Quest Data (including the latest version of the Quest Data) if termination of this MSA or any Schedule or SOW was due to Customer's breach. SUCH VERSION OF QUEST DATA RETAINED PURSUANT TO THE FOREGOING IS PROVIDED "AS-IS" AND QUEST MAKES NO REPRESENTATIONS OR WARRANTY WITH RESPECT TO THE QUEST DATA. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES ARE DISCLAIMED, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS, TIMELINESS, CORRECTNESS, NON-INFRINGEMENT, TITLE, AND FITNESS FOR ANY PARTICULAR USE, APPLICATION, OR PURPOSE. QUEST HAS NO RESPONSIBILITY FOR THE ACCURACY, ATTESTATION OR VERIFICATION, TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY QUEST DATA. NO ADDITIONAL STATEMENTS OUTSIDE THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE, WHETHER MADE BY EMPLOYEES OF QUEST OR OTHERWISE, IS A WARRANTY OR PROMISE BY QUEST. QUEST HAS NO RESPONSIBILITY OR LIABILITY FOR ANY WARRANTIES AS IT RELATES TO THE QUEST DATA NOR IS IT RESPONSIBLE FOR PROVIDING ONGOING SUPPORT SERVICES FOR SUCH DATA.

Warranty

- a) Software Warranty. Quest represents and warrants that the Software provided hereunder will operate substantially in accordance with the applicable Documentation, as described in an applicable Schedule. Quest will, use commercially reasonable efforts to make such additions, modifications, or adjustments to the Software as may be necessary to correct any repeatable problems or defects discovered in the Software and reported to Quest in writing by the Customer, excluding defects or problems arising from misuse by the Customer. The foregoing shall be Customer's sole and exclusive remedy for breach of the Software warranty.
- b) Services Warranty. Quest further represents and warrants that Professional Services and Maintenance Services will be performed in accordance with the applicable SOW or Schedule. If there is a breach of a warranty in this Section, as Customer's sole and exclusive remedy, within thirty (30) days from the date Customer notifies Quest in writing of the breach, Quest shall (to the extent feasible) re-perform the Professional Service or Maintenance Service, at no additional cost, as reasonably required to address any material defects caused by Quest's failure to meet this warranty.
- c) The warranties in this MSA shall be null and void in the event that all or any part of the Software is modified by Customer.
- d) DISCLAIMER OF WARRANTIES. QUEST MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SOFTWARE, THE DOCUMENTATION, MAINTENANCE SERVICES, QUEST DATA, PROFESSIONAL SERVICES OR ANY INFORMATION COLLECTED BY QUEST (INCLUDING FROM HEALTHCARE PROVIDERS), OR FURNISHED BY QUEST. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES ARE DISCLAIMED, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS, TIMELINESS, CORRECTNESS, NON-INFRINGEMENT, TITLE, AND FITNESS FOR ANY PARTICULAR USE, APPLICATION, OR PURPOSE. QUEST DOES NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED. QUEST HAS NO RESPONSIBILITY FOR THE ACCURACY, ATTESTATION OR VERIFICATION, TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY COMMUNICATION, CONTENT, DATA, OR OTHER INFORMATION. NO ADDITIONAL STATEMENTS OUTSIDE THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE, WHETHER MADE BY EMPLOYEES OF QUEST OR OTHERWISE, IS A WARRANTY OR PROMISE BY QUEST, AND QUEST HAS NO RESPONSIBILITY OR LIABILITY FOR ANY SUCH STATEMENTS.

LIMITATION OF LIABILITY

IN NO EVENT WILL QUEST BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM THE USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION, INTERRUPTION OR LOSS OF BUSINESS, LOSS OF DATA, REFUNDS OF FEES, LOSS OF PROFITS, LOSS OF INCOME OR COST OF REPLACEMENT SERVICES. QUEST'S LIABILITY TO THE CUSTOMER ARISING OUT OF ANY CLAIM FOR DAMAGES FOR ANY CAUSE WHATSOEVER WILL UNDER NO CIRCUMSTANCES EXCEED, IN AGGREGATE, THE TOTAL AMOUNT OF THE SUMS ACTUALLY PAID BY THE CUSTOMER TO QUEST LIMITED TO A PRO-RATA PORTION OF THE FEES CUSTOMER PAID QUEST DURING THE PRECEDING TWELVE MONTHS. THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 APPLY REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

Indemnity

- a) Quest Indemnification Obligations. Quest will hold harmless, indemnify, and defend Customer and its officers, directors, agents, and employees (collectively, "**Customer Parties**") from and against any and all third party claims brought against Customer alleging that the Software provided under this MSA infringes an U.S.-issued patent or U.S.-registered copyright of a third party; provided that, if an infringement claim occurs, Quest, within its sole discretion, may (i) acquire the right for Customer to continue to use the affected Software in accordance with the terms of this MSA; (ii) replace or modify the Software so that it becomes non-infringing; or (iii) terminate this MSA or the applicable Schedule, and refund to Customer any pre-paid Fees for Maintenance Services, if any, of the unused remainder of the applicable Subscription Period (or part thereof). Notwithstanding the foregoing, Quest will have no liability to the Customer Parties with respect to any Claim that is based upon, arises out of, or would not have occurred but for (A) Customer's combination of Software with a non-Quest product, software, data, business process or other component; (B) Customer's operation or use of the Software with any content, software, hardware, product, or apparatus not set forth in the Documentation, an applicable Schedule, or otherwise not approved in writing by Customer; (C) Customer's use of the Software in violation of this MSA (including the applicable Schedule or SOW), not in accordance with the Documentation, or in excess of the scope of license granted; (D) Customer's use of any third party software other than in accordance with the license agreement for such third-party software; or (E) Customer's failure to install or implement a released upgrade to the Software that would have avoided infringement. This Section 10(a) sets forth Customer's sole and exclusive remedy with respect to any Claim for Quest's alleged violation of any intellectual property or other rights of third parties.
- b) Customer Indemnification Obligations. Customer agrees to defend, indemnify, and hold harmless Quest, its affiliates, and their respective directors, officers,

shareholders, proprietors, partners, employees, agents, representatives, servants, attorneys, predecessors, successors and assigns (collectively, “**Quest Parties**”) from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs and expenses (including reasonable attorneys’ fees and litigation expenses) (“**Claims**”), relating to or arising from (i) the use of the Software, Quest Data, Customer Data, Maintenance Services, or Professional Services, (ii) any arrangements Customer makes based on information obtained on or through the Software, Quest Data, Customer Data, Maintenance Services, or Professional Services, (iii) any breach by Customer of this MSA, or (iv) any violation by Customer of applicable law or regulation.

- c) Indemnification Procedures. The indemnified party will provide prompt written notice to the indemnifying party of any Claim for which the indemnified party will seek indemnification under this MSA, and will provide reasonable assistance to the indemnifying party upon the indemnifying party’s reasonable request. The indemnifying party will have the right to defend and compromise such claim at the indemnifying party’s expense for the benefit of the indemnified party; provided, however, the indemnifying party will not have the right to obligate the indemnified party in any respect in connection with any such compromise without the written consent of the indemnified party. Notwithstanding the foregoing, if the indemnifying party fails to assume its obligation to defend, the indemnified party may do so to protect its interests and the indemnifying party will reimburse all costs incurred by the indemnified party in connection with such defense.

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