



## AQUANTY INC. MAINTENANCE AND SUPPORT TERMS AND CONDITIONS

The following terms and conditions (the “**Terms and Conditions**”) apply to Customer’s (as defined below) purchase of the Services (as defined below) from Aquanty Inc. (“**Aquanty**”). The Agreement (as defined below) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. To the extent of any conflict or inconsistency between the provisions of the Terms and Conditions and any schedule or addendum hereto or the Order Form (as defined below), the terms of such schedule, addendum or the Order Form shall prevail.

1. **Definitions.** Capitalized terms used in the Terms and Conditions, and not otherwise defined in the Agreement, shall have the following meanings:
  - (a) “**Agreement**” means the Terms and Conditions and the Order Form, and includes any amendments, addenda, supplements, schedules, exhibits or appendices attached, referencing the Terms and Conditions, or expressly made a part hereof.
  - (b) “**Business Hours**” means the period of the day commencing at 9:00 a.m. (Eastern Time) and ending at 5:00 p.m. (Eastern Time), on any “**Business Day**”, being Monday to Friday, except statutory holidays recognized in Ontario, Canada.
  - (c) “**Customer**” means the customer set out in the Order Form.
  - (d) “**Fees**” means the applicable fees, costs and expenses for the Services.
  - (e) “**Maintenance Services**” means: (i) access to Revisions; and (ii) access to Materials.
  - (f) “**Materials**” means instructional or supplementary documentation related to the Software and such online user groups as made available by Aquanty from time to time.
  - (g) “**Order Form**” means the initial ordering document signed by the parties representing the initial purchase of the Services to which the Terms and Conditions are attached.
  - (h) “**Revisions**” means any modification, improvement, enhancement, update, upgrade, new release and/or other change made to the Software.
  - (i) “**Services**” means Maintenance Services and Support Services.
  - (j) “**Software**” means the version(s) of Aquanty’s proprietary software products known as HydroGeoSphere and/or such other Aquanty products as agreed to by the parties from time to time, which Customer has a valid license to use.
  - (k) “**Support Services**” means support services made as made available and provided by provided by Aquanty to Customer from time to time, including, but not limited to, (i) clarification of the Software’s functionality; (ii) advice on the use and configuration of the Software including, but not limited to, modeling techniques; and (iii) responding to problems directly related to the Software.
2. **Subscription for Services.** Aquanty shall make each of the Services available to Customer on a subscription basis and such access is subject to the terms and conditions of this Agreement.

3. **Term.** This Agreement commences on the Effective Date and continues until the earlier of when all subscriptions for Services under this Agreement have expired or this Agreement has been terminated in accordance with its terms. Subscriptions for access to Maintenance Services commence on the “effective date” set out in the Order Form and shall continue for a period of twelve (12) months. Subscriptions for Support Services commence on the “effective date” set out in the Order Form and shall continue for a period of twelve (12) months. Subscriptions for a Service may be renewed at Aquanty’s then current-price, as long as Aquanty offers such services. Such renewal may be subject to the parties executing a new Order Form. Unless otherwise set out in the Order Form, Aquanty shall commence to make available and provide the Support Services to Customer on the date upon which it receives payment. Unless Customer provides Aquanty with notice of renewal of a subscription to a Service at least 30 days prior to the expiration of such applicable Service subscription term, Customer’s subscription to such Service shall automatically expire.
4. **Maintenance Services.**
  - (a) **Revisions.** Aquanty may from time to time make available Revisions to Customer. Any use of Revisions by Customer shall be subject to the terms and conditions of any applicable end-user license agreement accompanying such Revisions. Customer acknowledges that the use of any Revisions shall require Customer to be current with its payment of Fees. So long as the Customer is in good standing with respect to its payment of Fees, Aquanty shall make available to Customer all Revisions that are made available generally by Aquanty to other licensees of the Software. Customer acknowledges and agrees that the frequency, format and availability of Revisions shall be at Aquanty’s sole and absolute discretion.
  - (b) **Materials.** Aquanty reserves the right to modify, suspend or stop the Materials (or any part thereof), either temporarily or permanently, at any time or from time to time, with or without prior notice to Customer. Without limiting the foregoing, Aquanty may provide notice of any such changes to the Materials by posting them on its websites. Aquanty reserves the right to modify or replace any of its policies and practices related to the Materials. Access to certain Materials may subject to additional terms and conditions from Aquanty or require Customer to enter into an agreement with a third party. Customer agrees that Aquanty shall not be liable to Customer or any third party for any modification or cessation of the Materials. Customer acknowledges that Aquanty has no express or implied obligation to provide, or continue to provide, the Materials, or any part thereof, now or in the future.
5. **Support Services.**
  - (a) **Availability of the Support Services.** Support Services shall be available to Customer, and performed, during Business Hours by telephone or e-mail dedicated help desk support. Aquanty will provide all necessary and appropriate personnel to perform the Support Services. The personnel performing the Support Services will not be required to perform services exclusively for Customer, but may also provide similar services for Aquanty, its customers and other parties. Aquanty will provide the Support Services in a timely manner consistent with Aquanty’s operation of its business.
  - (b) **Customer’s Obligations.** Customer shall provide Aquanty with a duly qualified and trained representative and with all relevant information, equipment, databases, software or other resources and assistance reasonably required by Aquanty to enable Aquanty to provide the Services to Customer. Aquanty reserves the right, in its sole and absolute discretion, to limit the scope of, or otherwise refrain from providing, the Services to Customer if a version of the Software being used by Customer is deemed to be obsolete.
  - (c) **Processing Errors.** Customer is responsible for the accuracy and completeness of all information, data or other items submitted by Customer to Aquanty for processing or

transmission in connection with the Support Services or the Software (collectively, “**Customer Data**”) and for any errors in and with respect to information, data or other items obtained from Aquanty because of any inaccuracies or incompleteness of any of Customer Data. Customer acknowledges and agrees that Aquanty shall have no liability to Customer or any other party with respect to any results from, or work products generated by, Customer’s use of the Software and/or the Support Services.

- (d) **Confidentiality.** Aquanty shall use reasonable efforts to maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Except as otherwise permitted in writing by Customer, Aquanty shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information (as defined below) for any purpose other than to provide the Services. Aquanty may disclose Confidential Information if it is compelled by law to do so, provided Aquanty gives Customer prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Customer’s cost, if Customer wishes to contest the disclosure. In these Terms and Conditions “**Confidential Information**” means all Customer Data that Customer advises Aquanty is confidential and/or proprietary to Customer. However, Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed by Aquanty to Customer; (ii) was known to Aquanty prior to its disclosure by Customer without breach of any obligation owed to Customer; or (iii) is received by Aquanty from a third party without breach of any obligation owed to Customer.
- (e) **General Limitation.** Nothing in this Agreement will require Aquanty to: (i) perform or provide any services not provided for in this Agreement; or (ii) undertake services that require any capital expenditures by Aquanty without the prior agreement of Customer. Customer agrees that minor changes or additions to the Support Services, may be undertaken by Aquanty, provided that Aquanty performs the Support Services substantially in the same manner. Customer acknowledges and agrees that, except as otherwise explicitly stated in the Terms and Conditions, the applicable underlying license agreement(s) to use the Software, or as agreed to by the parties, Aquanty is not responsible for the installation, operation, maintenance or support of any equipment or software owned or used by Customer. Customer further acknowledges and agrees that Customer’s failure to use the Support Services during any six (12) month consecutive period shall result in (a) Aquanty reducing the Retainer (as defined below) to a zero balance, without set off by Customer, as payment for allocating resources to provide the Support Services hereunder; and (b) if this Agreement is also terminated pursuant Section 7(a), Customer shall be required to enter into a new maintenance and support agreement with Aquanty for the provision of any Support Services to Customer in the future.
- (f) **Professional Services.** Customer may request at any time, and from time to time, that Aquanty provide Customer with any other professional services that are not included in the Support Services including, but not limited to, any consulting, engineering or development services. Aquanty shall evaluate such requests and shall provide Customer an estimate of the cost of such professional services. All such professional services shall be completed pursuant to an agreement to be entered into by the parties.

## 6. Fees.

- (a) **General Terms.** In addition to any payment terms set out in the Order Form, Customer shall be responsible for all sales, use, value added, withholding, or other taxes or duties, as applicable, payable with respect to the Fees or otherwise arising out of or in connection with the Services. Fees may be paid by credit card, certified cheque, wire transfer or as otherwise

indicated by Aquanty. Unless otherwise set out in the applicable Order Form, all amounts to be advanced, paid, tendered or calculated hereunder are to be in Canadian currency.

(b) **Support Services Payment Terms.**

- (i) Support Services to be provided to Customer shall be billed based upon the time incurred by Aquanty in providing such Support Services. All Fees shall be paid in advance for the provision of the Support Services by way of retainer (the “**Retainer**”). The initial Retainer due upon entering into this Agreement shall be equal to that number of hours of Support Services set out in the Order Form (plus applicable taxes). Aquanty shall apply the Retainer against Fees for the Support Services performed as hereinafter set forth. Customer may refresh the Retainer by paying Aquanty incremental amounts equal to Fees payable for that number of hours of the Support Services specified by Aquanty at such time (plus applicable taxes). Fees for the Support Services are charged in increments of 15 minutes at the then current hourly rate. Accordingly, by way of example, a 20 minute use of the Support Services will be charged at a rate equal to 30 minutes of the Support Services and a 50 minute use will be charged at the then current rate equal to 60 minutes.
- (ii) If there is a dispute as to the amount payable to Aquanty for the Support Services provided, Customer will, within ten (10) calendar days of receipt of Aquanty’s invoice, notify Aquanty in writing that it disputes Aquanty’s invoice. Customer will be deemed to have finally accepted Aquanty’s invoice unless it delivers its dispute notice to Aquanty within the applicable time period. Despite the submission of a dispute notice by Customer, Customer will pay to Aquanty, in accordance with the terms of this Agreement, all amounts that are not in dispute. Customer and Aquanty will negotiate in good faith to resolve any invoice dispute.

7. **Termination.**

- (a) Aquanty may terminate this Agreement upon the occurrence of any of the following events, which shall be deemed to be a breach of the terms of this Agreement: (a) if Customer fails to perform any of its obligations hereunder, or there the Customer has materially breached of any provision of this Agreement; provided that Aquanty shall first have given prior notice to Customer of Aquanty’s intent to terminate, together with details of the default causing the termination, and the party receiving such notice shall have been given 10 days to cure any such default; (b) Customer (A) ceases or threatens to cease to carry on its business, commits an act of bankruptcy, makes an assignment or bulk sale of its assets, or proposes a compromise or arrangement to its creditors, or (B) is subject to any proceeding that is taken to: (i) compromise or make an arrangement with that party’s creditors, (ii) obtain an order to assign that party into bankruptcy or winding-up that party, or (iii) obtain an order to appoint a receiver over any part of that party’s assets, and in each case, such proceeding are not dismissed within 60 days of such proceeding being initiated; or (c) Customer is in breach of its license agreement with Aquanty for use of the Software.
- (b) In the event of termination of this Agreement, the following shall apply:
  - (i) Aquanty shall cease to make the Services available to Customer;
  - (ii) If this Agreement is terminated by Aquanty in accordance with Section 7(a), Aquanty shall return to Customer those amounts prepaid under this Agreement as of the effective date of termination.
  - (iii) Aquanty shall return to Customer all of Customer Data that is in its possession.

- (iv) Any terms and conditions of this Agreement that by their nature extend beyond the termination or expiry of this Agreement shall survive the termination or expiry of this Agreement including, without limitation, Sections 5(c), 8, 9, 10 and 11.
8. **Disclaimer of Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY ANY APPLICABLE LAW, AQUANTY GIVES NO CONDITION, WARRANTY, UNDERTAKING OR REPRESENTATION, IMPLIED OR OTHERWISE, IN RESPECT OF THE SERVICES, ALL OF WHICH ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. AQUANTY DOES NOT WARRANT THE ACCURACY, COMPLETENESS, RELIABILITY OR SUITABILITY OF ANY OF THE SERVICES AND DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESSED OR IMPLIED, IN CONNECTION WITH THE SERVICES. CUSTOMER WAIVES, RELEASES AND DISCLAIMS ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF AQUANTY AND ALL OTHER REMEDIES, RIGHTS AND CLAIMS AGAINST AQUANTY, EXPRESS OR IMPLIED, ARISING BY LAW, STATUTE OR OTHERWISE, WITH RESPECT TO THE SERVICES (INCLUDING, BUT NOT LIMITED TO THE RESULTS OF ANY SUPPORT SERVICES) OR OTHERWISE IN CONNECTION WITH CUSTOMER’S USE OF THE SERVICES, AND ANY OTHER ITEMS SUBJECT TO, OR RELATED OR ASSOCIATED WITH, THIS AGREEMENT, INCLUDING, ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; ANY WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; ANY OBLIGATION, LIABILITY, RIGHT, REMEDY OR CLAIM IN TORT, DESPITE ANY FAULT, NEGLIGENCE, OMISSION OR STRICT LIABILITY OF AQUANTY (WHETHER ACTIVE, PASSIVE OR IMPUTED); AND ANY OBLIGATION, LIABILITY, REMEDY, RIGHT OR CLAIM FOR INFRINGEMENT.
9. **Limitation of Liability.** IN NO EVENT SHALL AQUANTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY OR ANY OTHER DAMAGES INDIRECTLY ARISING OUT OF OR RELATED TO THE AGREEMENT, IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS BEEN DISCLOSED TO AQUANTY. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. IN NO EVENT SHALL AQUANTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO AQUANTY UNDER THIS AGREEMENT IN THE PERIOD OF TIME PRECEDING THE INCIDENT GIVING RISE TO SUCH LIABILITY.
10. **Proprietary Terms.** Customer acknowledges and agrees that any suggestions, enhancement requests, recommendations or other feedback provided to Aquanty by Customer relating to the Services, the Software or any part thereof (collectively, “**Submissions**”) shall become Aquanty’s sole property. Aquanty shall own exclusive rights, including all intellectual property rights, in and to all Submissions. In the event that any intellectual property rights in and to any Submissions vests, or has vested, in Customer, Customer hereby assigns to Aquanty all of Customer’s right, title and interest in all such Submissions and Customer hereby waives to and in favour of Aquanty any of Customer’s moral rights in and to all such Submissions.
11. **General.**
- (a) **Force Majeure.** Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including, but not limited to, acts of God, fire, labour difficulties, governmental action or terrorism, provided that the party seeking



to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

- (b) **Non-Solicitation of Aquanty Employees.** Customer agrees with Aquanty to not, during the duration of this Agreement and for a period of two (2) years thereafter in any capacity or manner, whether directly or indirectly, individually or in partnership or otherwise jointly or in concert with any other party: (i) induce or encourage any employee to leave the employment of Aquanty or authorize, assist, approve or encourage this action by any other party; or (ii) hire or attempt to hire or otherwise solicit any employee of Aquanty or authorize, assist, approve or encourage this action by any other party.
- (c) **Governing Law.** This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Customer irrevocably attorns to the exclusive jurisdiction of the courts of the province of Ontario, without regard to conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (also called the Vienna Convention, and which is cited in the statutes of Canada as the *International Sale of Goods Contracts Convention Act*) will not apply to this Agreement.
- (d) **Miscellaneous.** The parties acknowledge that they are separate entities, that Aquanty and Customer have each entered into this Agreement for independent business reasons, and that the execution and performance of this Agreement does not create a partnership or joint venture between them. This Agreement may be amended only by writing signed by both parties. If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. Aquanty may assign this Agreement without written notice to Customer. Customer may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations. This Agreement shall be binding on and shall enure to the benefit of the parties, their successors and permitted assigns. The headings to the sections of this Agreement are used for convenience only and shall have no substantive meaning. This Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.