

## SOFTWARE SUBSCRIPTION AGREEMENT

AquaFold, Inc.  
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BY PROCEEDING TO DOWNLOAD, INSTALL OR USE THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED OR BY OBTAINING A LICENSE KEY FOR THIS SOFTWARE, YOU HEREBY ACKNOWLEDGE AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, THEN CLICK **"DO NOT ACCEPT."** DO NOT INSTALL OR USE THE SOFTWARE AND DELETE THE SOFTWARE FROM YOUR COMPUTER SYSTEM. BY INSTALLING OR USING THE SOFTWARE OR BY CLICKING ON **"ACCEPT"** YOU ACKNOWLEDGE AND AGREE THAT ON BEHALF OF YOURSELF AND YOUR EMPLOYER YOU HAVE READ THIS SOFTWARE SUBSCRIPTION AGREEMENT CAREFULLY, THAT YOU AND YOUR EMPLOYER AGREE TO BE BOUND BY THIS AGREEMENT AND THAT IF APPLICABLE YOUR EMPLOYER HAS INFORMED YOU OF THE RELEVANT PROVISIONS OF THIS AGREEMENT WHICH MAY BE APPLICABLE TO YOU. THIS AGREEMENT, SHALL GOVERN YOUR INSTALLATION AND USE OF THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED. AQUAFOLD URGES YOU TO CAREFULLY READ THIS AGREEMENT AND ASSESS YOUR USE OF THE SOFTWARE PRIOR TO INSTALLING OR USING THE SOFTWARE OR MAKING ANY DECISION TO USE OR SUBSCRIBE TO IT.

THIS SOFTWARE SUBSCRIPTION AGREEMENT, is dated as of the date of, in the case of any Evaluation Software (as defined in Section 16 below), the date of Customer's acquisition of a License Key, or in the case of any purchase of a license for use of the Licensed Software (as defined below), the date of the Purchase Order (as defined below) pursuant to which such license is purchased, is between AquaFold, Inc., a Delaware corporation ("AquaFold"), and, in the case of any Evaluation Software, the customer to whom temporary Licenses Keys are delivered or, in the case of any purchase of a license for use of the Licensed Software, the customer set forth on the purchase order pursuant to which such license is purchased (in each case, herein "Customer"), and sets forth the terms and conditions whereby AquaFold agrees to provide to Customer for a limited period of time and Customer agrees to acquire from AquaFold one or more limited licenses to use certain software and documentation and maintenance services related thereto, owned or licensed by AquaFold or a subsidiary or an affiliate of AquaFold, as set forth on the Purchase Order delivered in connection with this Agreement. To the extent any terms or conditions contained in the Purchase Order conflict with the terms or conditions contained in this Agreement, the terms and conditions of the Purchase Order shall supersede only those conflicting terms or conditions contained in this Agreement and only to the minimum extent necessary to harmonize the terms and conditions in such Purchase Order with the terms and conditions contained herein. The Purchase Order together with the terms and conditions of this Agreement (as defined below), shall constitute and be construed as a single agreement consisting of the terms and conditions contained in the Purchase Order together with the terms of this Agreement. This Agreement specifically supersedes and replaces the terms and conditions of all prior agreements between AquaFold and Customer relating to the software subscribed to hereunder by Customer, including, but not limited to, any shrink-wrap agreements, click-wrap agreements or any demo or trial agreements which may accompany or are embedded in AquaFold's products or which have been previously in force between the parties. If Customer is evaluating Evaluation Software, then only the terms and conditions of Section 16 below (including those Sections of this Agreement incorporated therein by reference) will govern Customer's temporary use of such Evaluation Software (and no other terms of this Agreement shall apply to Customer or govern Customer's use of Evaluation Software) and upon purchase of a commercial license for such Evaluation Software, this entire Agreement, exclusive of Section 16, shall apply to Customer and govern all use of the Licensed Material (as defined below). In consideration of the mutual promises and agreements contained herein, the parties hereto also agree as follows:

### GENERAL TERMS AND CONDITIONS

#### 1. Definitions –

- (a) "Agreement" means this software subscription agreement, together with all exhibits, schedules, annexes and Purchase Orders made a part hereof in accordance with the terms of this Agreement and all amendments, modifications, supplements and alterations thereto effected in accordance with the terms of this Agreement.
- (b) "Confidential Information" means all technical and non-technical information in both tangible and intangible form, including, but not limited to, product design information, software code, technical information, customer information, discounting, cost and pricing information, financial information and the results derived from or methodology employed by Customer in conducting any benchmark testing of the Licensed Software; provided that the term "Confidential Information" shall not include information which the recipient can show by reasonable proof (i) to have been known by the recipient prior to the time of disclosure by the disclosing party, (ii) to have become part of the public domain through no fault or breach of this Agreement by the recipient, (iii) to have been disclosed to the recipient in good faith by a third party who is not under any obligation of confidence or secrecy to the disclosing party at the time such third party discloses the information to the recipient or (iv) to have been compelled to be produced by a court of competent jurisdiction, provided that the recipient shall first give notice to the disclosing party of any such request or order of the court to give the disclosing party an opportunity to contest or limit said request or order of the court.
- (c) "Error" means any error, defect or omission that (i) is discovered in the Licensed Software, (ii) is reproducible and (iii) prevents operation of the Licensed Software substantially in accordance with the Licensed Documentation.
- (d) "Licensed Documentation" means the published user manuals that AquaFold makes generally available for the Licensed Software.
- (e) "Licensed Material" means the Licensed Software and the Licensed Documentation.
- (f) "Licensed Software" means the machine-readable object code version of (i) the software specified on each Purchase Order, whether embedded on disc, tape, internet download site or other media and (ii) all Updates for the Licensed Software that Customer is entitled to receive in connection with its receipt of Maintenance Services pursuant to Section 4 of this Agreement.
- (g) "License Term" means, with respect to any Licensed Software, the period of time or duration of the subscription specified on the Purchase Order pursuant to which Customer subscribed to such Licensed Software, together with all renewals thereof effected in accordance with the terms of this Agreement; provided that to the extent no such time period or duration is specified in the Purchase Order pursuant to which Customer subscribed to such Licensed Software, the period of time or duration of the subscription shall be one (1) year commencing on the date of such Purchase Order, together with all renewals thereof effected in accordance with the terms of this Agreement.
- (h) "Maintenance Services" means the technical support services provided by AquaFold pursuant to Section 4 hereof.
- (i) "Purchase Order" means (i) AquaFold's standard price quote, purchase order, order form or purchase confirmation (including such price quotes, order forms and purchase confirmations as may be delivered through use of AquaFold's online store), as such document may be amended, supplemented or modified from time to time in accordance with this Agreement or (ii) any other non-AquaFold price quote, purchase order, order form or purchase confirmation delivered by Customer to AquaFold but

solely to the extent permitted by and delivered in accordance with Section 15.

- (j) "Thread" means the process of the Licensed Software executing a routine that is pre-programmed by Customer.
- (k) "Unrestricted License Key" means any License Key (as defined in Section 2(e) below) issued by AquaFold that is authorized by AquaFold to permit the authorized installation of more than one license for Licensed Software through use of the same License Key.
- (l) "Update" means any revision, enhancement, improvement or modification to or programming fix for the Licensed Software or Licensed Documentation which AquaFold makes generally available, incorporates into and makes a part of the Licensed Software or Licensed Documentation and does not separately price or market.

## 2. LICENSE –

- (a) **Use** – Subject to the terms and conditions of this Agreement, including, but not limited to the applicable licensing restrictions set forth in Section 2(b) below, and subject further to Customer's full compliance herewith and according to the scope, time period and other terms indicated on the applicable Purchase Order delivered in connection with this Agreement, AquaFold hereby grants Customer and Customer hereby accepts from AquaFold, a limited, non-exclusive and non-transferable (except as otherwise expressly provided in Section 17(a) below) right and license during the License Term to install the Licensed Software on computer hardware that is owned or operated by or on behalf of Customer, to access and use the Licensed Material in accordance with the applicable restrictions and conditions contained in this Agreement and to copy the Licensed Material as permitted by this Agreement. Customer's right to use the Licensed Material during the License Term shall extend to use by third parties under a written agreement with Customer to provide outsourcing services for Customer's own internal business operations; provided, that (i) such third parties have agreed to abide by the terms of this Agreement and (ii) Customer shall remain primarily liable for all acts and omissions by such third parties.
- (b) **License Usage and Restrictions** – Customer acknowledges and agrees that, as between Customer and AquaFold, AquaFold, its subsidiaries and affiliates and its licensors own and shall continue to own all right, title, and interest in and to the Licensed Material and all derivatives thereof, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. This Agreement does not grant Customer any ownership interest in or to the Licensed Material, but only a limited right and license to use the Licensed Materials during the License Term in accordance with the terms of this Agreement and each applicable Purchase Order. Customer further acknowledges and agrees that the licenses granted hereunder and the restrictions applicable to Customer's installation and use of the Licensed Software will vary according to the type of Licensed Software purchased by Customer and the type of license purchased by Customer. One or more of the restrictions set forth in this Section 2 may apply to the Licensed Software depending upon the type of Licensed Software purchased by Customer, the type of license purchased and the terms contained in the applicable Purchase Order relating to the Licensed Software. Customer is encouraged to carefully review all terms and restrictions contained in this Section 2 and each Purchase Order. Customer hereby agrees to the following license restrictions and conditions applicable to the Licensed Software as set forth in the Purchase Orders delivered by Customer under this Agreement:
  - (i) For all Licensed Software made generally available by AquaFold on a "per-server" basis and licensed hereunder by Customer on a "per-server" basis (a "Server-Based License"), Customer may install, operate and use such Licensed Software during the License Term on one (1) physical or one (1) virtual server per license purchased by Customer;

- (ii) For all Licensed Software made generally available by AquaFold on a "per-user" or "per-seat" basis and licensed hereunder by Customer on a "per-user" or "per-seat" basis, Customer may install and operate such Licensed Software during the License Term on up to two (2) physical servers or virtual servers but Customer shall not simultaneously access and use such Licensed Software by more than one (1) user per license purchased by Customer;
- (iii) For all Licensed Software made generally available by AquaFold on a "per-Thread" basis and licensed hereunder by Customer on a "per-Thread" basis (a "Thread-Based License"), Customer may use the Licensed Software during the License Term to simultaneously execute such number of Threads up to, but not exceeding, the number of Threads for which Customer has purchased a license; and
- (iv) For all Licensed Software made generally available by AquaFold on a "named user" basis and licensed hereunder by Customer on a "named user" basis (a "Named User License"), Customer may install and operate such Licensed Software during the License Term on up to two (2) computers and designate in writing one (1) person in Customer's organization (the "Named User") who shall have the right to use the Licensed Software, provided that only the Named User uses the Licensed Software and such use is not conducted on more than one such computer simultaneously.

In no event shall Customer install, operate, use or access the Licensed Software in contravention of the foregoing restrictions applicable to the Licensed Software or any other restrictions contained in this Agreement.

- (c) **Additional Terms Governing Server Licenses** – Customer may re-assign a Server-Based License to a different server; provided, that (i) such Server-Based License may not be installed or operated on more than one server simultaneously and (ii) except for a re-assignment in connection with a hardware failure, a Server-Based License may not be re-assigned on a different server within the first ninety (90) days following its most recent installation.
- (d) **Additional Terms Governing Thread Licenses** – A Thread may be executed or terminated using the Licensed Software: (a) by Customer's command via a web interface to the Licensed Software accessed by Customer via the HTTP connection; (b) automatically in accordance with a schedule defined by Customer using job scheduling functionality of the Licensed Software; or (c) by software or a programing interface created by Customer that utilizes the certain open application programming interface ("APIs") made available by AquaFold in the Licensed Software. A Thread is terminated when it ends according to the logic pre-programmed in the routine created by Customer and the duration of the execution of a Thread depends on the particular task of the corresponding routine created by Customer and the available hardware and third party software resources required to execute such routine. Thread-Based Licenses are limited to simultaneously executing the number of Threads equal to the Threads purchased in connection with such license; provided the physical and logical resources of the server upon which the Licensed Software is installed are sufficient for such parallel simultaneous execution. In the event that the physical or logical resources of the server are depleted by parallel simultaneous execution of threads or the number of Threads to be simultaneously executed exceeds the number of Threads permitted under such license, the Licensed Software may automatically prevent the execution of such excess Threads and such excess Threads may be queued and executed sequentially as the required physical or logical resources become available.
- (e) **License Keys** – Customer acknowledges that a security code owned and controlled by AquaFold or its subsidiaries (the "License Key") is required to render each license for the Licensed Software operational on Customer's computer hardware for the

duration of the License Term. Upon use of a permanent License Key to install the Licensed Software on Customer's computer hardware, no other security code will be required for the Licensed Material to operate on such computer hardware during the License Term in accordance with the terms and restrictions contained in this Agreement. Except with respect to Unrestricted License Keys, Customer may only install one license for the Licensed Software per individual License Key issued in respect of such Licensed Software. Customer shall not attempt to crack, alter or otherwise derive any License Key. AquaFold shall promptly provide Customer with all necessary License Keys upon Customer's subscription to the Licensed Software or upon any authorized transfer or re-assignment of the Licensed Software to any other hardware equipment permitted under this Agreement. Customer is solely responsible for safeguarding all License Keys and hereby agrees to do so in a timely, accurate and secure manner. Customer hereby acknowledges that AquaFold is under no obligation to issue any Unrestricted License Key and that AquaFold's issuance of any Unrestricted license Key is subject to Customer's full compliance with the additional terms contained in Section 13(b) hereof, the terms of which Customer hereby agrees to fully comply with upon receipt of any Unrestricted License Key.

- (f) **Copies & Disaster Recovery** – Customer may make a reasonable number of back-up archival copies of the Licensed Software. In the event of any outage that results in the complete failure of the computer system upon which Customer has installed the Licensed Software, Customer's right to use the Licensed Software shall include, during the pendency of such outage, the temporary right to use the Licensed Software in a replacement computing environment substantially similar to the original computing environment upon which the Licensed Software was installed immediately prior to such outage. Except as expressly provided in this Section 2(f), Customer shall not use any back-up archival copy of the Licensed Software or Evaluation Software for any commercial purpose or in a production environment. Customer shall reproduce all confidentiality and proprietary notices on each of the copies permitted hereunder and maintain an accurate record of the location of each of the copies. Customer shall not otherwise copy or duplicate the Licensed Material. Customer shall not reverse engineer, disassemble, translate, modify, adapt, or decompile the Licensed Material or apply any procedure or process to the Licensed Material in order to ascertain, derive, and/or appropriate the source code or source listings for the Licensed Software or any trade secret or other proprietary information contained in the Licensed Software.
- (g) **Renewal of License Term** – Upon expiration of each License Term, all limited subscription licenses granted under this Agreement shall automatically renew for an additional 12-month License Term and AquaFold will invoice Customer at the then-current subscription-based price for such additional License Term, unless AquaFold is notified by Customer in writing at least sixty (60) days prior to the expiration of such current License Term that Customer elects not to renew such limited subscription license for an additional License Term.
- (h) **Other Services** – All licenses and Maintenance Services subscribed to by Customer in respect of the Licensed Material shall be governed by this Agreement, together with the applicable Purchase Orders delivered hereunder. Unless otherwise agreed by the parties in writing, all other services purchased by Customer in respect of the Licensed Software, if any, including implementation services, training services and professional services (collectively, "Ancillary Services"), shall be governed solely by a separate written mutually acceptable services agreement entered into by the parties or, in the absence of such agreement, AquaFold's standard professional services agreement, and acceptance of the Licensed Material shall not be contingent upon Customer's acceptance of any such Ancillary Services.

### 3. DELIVERY AND PAYMENT TERMS –

- (a) **Delivery** – All Licensed Material shall be delivered by AquaFold to Customer via electronic delivery using a secure internet download site. Customer's subscription to all Licensed Software

subscribed to hereunder, the License Term in respect of such Licensed Software and risk of loss for such Licensed Materials shall be deemed to have commenced once AquaFold has made the Licensed Material available for download by Customer, notified Customer of the availability of the Licensed Material for download and provided Customer with License Keys necessary for the installation and operation of the Licensed Software.

- (b) **Payment** – Upon delivery of a Purchase Order by Customer, AquaFold shall deliver an invoice to Customer specifying the subscription license fees payable pursuant to such Purchase Order for the License Term. Customer shall pay all subscription license fees specified therein within thirty (30) days of Customer's receipt of such invoice. All fees payable by Customer in respect of such Ancillary Services may be separately invoiced. Customer's payment obligation with respect to all subscription license fees owing hereunder shall be independent of the provision of Ancillary Services, whether or not such Ancillary Services are separately invoiced. Any late payment of any amount owing hereunder shall accrue interest at a rate equal to the lesser of (i) 15% per annum and (ii) the maximum rate permitted by law.
- (c) **Taxes** – All payments referred to in this Agreement are exclusive of value added tax, sales tax and any other applicable taxes, duties or imposts which (with the exception only of those based on AquaFold's income) shall also be payable by Customer in accordance with applicable law.

**4. MAINTENANCE** – AquaFold does not warrant that the Licensed Software will operate error-free or may be used error-free. Customer's right to use the Licensed Software during the License Term shall include the provision of Maintenance Services by AquaFold at no additional fee. Upon Customer's payment of the subscription license fees associated with the License Term purchased by Customer for the Licensed Software specified in a Purchase Order, AquaFold shall provide Maintenance Services in accordance with this Section 4 and in accordance with any additional Maintenance Services terms specified in such Purchase Order. AquaFold or its authorized representative will provide Maintenance Services for the Licensed Software during each License Term. Maintenance Services includes problem determinations, reasonable problem resolutions, provisioning of software program temporary fixes and new releases. Maintenance Services shall also include the additional Maintenance Service terms expressly set forth in writing in the Purchase Order delivered by Customer, which are hereby incorporated herein by reference. Maintenance Services shall entitle Customer to receive, at no additional cost, all Updates.

**5. PROPRIETARY RIGHTS** – Customer shall not acquire, by virtue of this Agreement, any right or license other than as expressly provided herein. Customer shall not reproduce the Licensed Material or other confidential or proprietary information of AquaFold, except as provided in this Agreement. All proprietary rights in and to the Licensed Material and all Evaluation Software (as defined in Section 16 below), all derivatives, translations, modifications, adaptations, improvements, enhancements or developments thereof and all confidential or proprietary information of AquaFold, including without limitation, all rights under and with respect to patents, copyrights, trademarks and rights under the trade secret laws of any jurisdiction shall remain the sole property of AquaFold, its subsidiaries or affiliates or its applicable licensors, whether recognized by or perfected under applicable local law. Customer shall promptly notify AquaFold of any infringement of AquaFold's proprietary rights of which it becomes aware.

### 6. LIMITED WARRANTIES

- (a) **Warranty** – AquaFold warrants to Customer that during the License Term (the "Warranty Period") such Licensed Software will perform substantially as described in the accompanying Licensed Documentation. AquaFold does not warrant that (i) the Licensed Software will satisfy or may be customized to satisfy any of Customer's requirements or any other particular use or (ii) the use of the Licensed Software will be uninterrupted or error-free. Laws from time to time in force may imply warranties that cannot be excluded or can only be excluded to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.

- (b) **Remedies** – If at any time during the Warranty Period, AquaFold breaches the warranty set forth in clause (a) above, then Customer shall promptly notify AquaFold of such Error or breach and AquaFold shall (A) use all commercially reasonable efforts to correct such Error or breach within thirty (30) days of notification or (B) provide Customer within thirty (30) days of notification with a plan reasonably acceptable to Customer for correcting such Error or breach. If such Error or breach is not corrected or if a reasonably acceptable plan for correcting such Error or breach is not established within such thirty (30) day period, AquaFold shall replace the defective Licensed Software or, if not practicable, accept the return of the defective Licensed Software and refund to Customer the pro rata portion of all pre-paid license fees actually paid by Customer for the defective Licensed Software in respect of the remaining portion of the current License Term. AquaFold's obligations under this Section 6(b) shall be waived in the event such Error or breach is due to (I) any defect in or misconfiguration of the computer hardware upon which the Licensed Software is installed, (II) improper handling or use of the software media by Customer, or (III) an unauthorized alteration, revision or configuration of the Licensed Software or to Customer's computer system by Customer or its employees. Customer acknowledges that this Section 6(b) sets forth Customer's sole and exclusive remedy, and AquaFold's and its authorized representatives' sole and exclusive liability, for any breach of warranty, Error or failure of the Licensed Software to function properly.
- (c) **Disclaimer – EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE LICENSED MATERIAL, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY AQUAFOLD OR ITS AUTHORIZED REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN AND DISCLAIMED.**

## 7. INDEMNITY

- (a) **Indemnity** – Subject to this Section 7 and Section 8 below, AquaFold agrees during the License Term to indemnify, defend and hold harmless Customer from and against all claims, damages, losses, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of any claim by a third party asserting that the Licensed Material or any of Customer's use thereof, infringes upon any third party's patent, copyright or trademark, provided that (i) Customer promptly notifies AquaFold in writing no later than thirty (30) days after Customer's notice of any potential claim, (ii) Customer permits AquaFold to defend, compromise or settle the claim, and provided further that no settlement intended to bind Customer shall be made without Customer's prior written authorization and (iii) Customer gives AquaFold all available information, reasonable assistance, and authority to enable AquaFold to do so.
- (b) **Alternative Remedy** – If a claim described in Paragraph 7(a) may or has been asserted, Customer will permit AquaFold, at AquaFold's option and expense, to (i) procure the right to continue using the Licensed Material during the current License Term, (ii) replace or modify the Licensed Material to eliminate the infringement while providing functionally equivalent performance or (iii) accept the return of the Licensed Material and refund to Customer the pro rata portion of all pre-paid license fees actually paid by Customer for such Licensed Software in respect of the remaining portion of the current License Term.
- (c) **Limitation** – AquaFold shall have no indemnity obligation to Customer hereunder if the violation or infringement claim results from (i) a correction or modification of the Licensed Material not provided by AquaFold or its authorized representative, (ii) the failure to promptly install an Update, (iii) the combination of the Licensed Software with other non-AquaFold software and (iv) continuing the allegedly infringing activity after receiving written notice of such infringement claim from AquaFold.

**8. NO CONSEQUENTIAL DAMAGES – UNDER NO CIRCUMSTANCES WILL AQUAFOLD, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS BY CUSTOMER OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE LICENSED MATERIALS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, BREACH OF ANY INTELLECTUAL PROPERTY RIGHT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY INCURRED IN ANY ACTION OR PROCEEDING BY AQUAFOLD, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE AUTHORIZED REPRESENTATIVE EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SPECIFIC LICENSED SOFTWARE THAT DIRECTLY CAUSED THE DAMAGE DURING THE CURRENT LICENSE TERM.**

## 9. CONFIDENTIALITY

- (a) **Confidentiality.** – Customer acknowledges that the Licensed Materials incorporate confidential and proprietary information developed or acquired by or licensed to AquaFold and that all results of testing of the Licensed Software, whether performed by Customer or another third party, are confidential. In no event will Customer publish or disclose the results of any testing or performance specifications of the Licensed Software without AquaFold's express prior written consent. A party that receives Confidential Information (the "Receiving Party") from the other party (the "Disclosing Party") shall not: (i) export or re-export (within the meaning of US laws or other export control laws or regulations) any Confidential Information, except in strict compliance with US laws; (ii) reverse engineer any Confidential Information; or (iii) disclose or make available the Disclosing Party's Confidential Information to any of the Receiving Party's employees, agents, contractors or consultants or to any third parties, except those that have agreed in writing to be bound by terms and conditions substantially similar to, and no less restrictive with respect to limitations on use and disclosure, than those contained in this Agreement and each of which have a "need to know" in order to carry out the purposes set forth in this Agreement. Each party shall take all reasonable precautions necessary to safeguard the confidentiality of all Confidential Information disclosed by the other party, including those precautions (A) taken by the disclosing party to protect its own Confidential Information and (B) which the disclosing party or its authorized representative may reasonably request from time to time. Neither party shall allow the removal or defacement of any confidentiality or proprietary notice placed on the Confidential Information disclosed by the disclosing party. The placement of copyright notices on Confidential Information shall not constitute publication or otherwise impair their confidential nature of such information.

- (b) **Disclosure** – If an unauthorized use or disclosure of the disclosing party's Confidential Information occurs within the recipient party's enterprise, the recipient party will immediately notify the disclosing party or its authorized representative and take, at recipient party's expense, all steps which may be available to recover such Confidential Information and to prevent its subsequent unauthorized use or dissemination.

**10. TERMINATION** – Upon 30-days prior written notice to AquaFold, Customer may terminate this Agreement and all subscriptions purchased hereunder; provided, however, that Customer shall not be entitled to any refund or credit (except as otherwise expressly set forth in this Agreement) of any amounts paid by Customer or a release from or cancellation, waiver or novation of any amounts payable or promised to be paid by Customer hereunder and all such amounts payable or promised to be paid by Customer in respect of the remaining portion of the current License Term shall automatically accelerate, become immediately due and payable and shall survive termination of this Agreement. If Customer or any of

Customer's employees, consultants, authorized representatives or permitted third parties breach any term or condition of this Agreement, AquaFold may terminate this Agreement, without judicial or administrative resolution or obligation to refund and all amounts payable or promised to be paid by Customer in respect of the remaining portion of the current License Term shall automatically accelerate, become immediately due and payable and shall survive termination of this Agreement. This Agreement will terminate automatically (i) upon expiration or termination of all License Terms hereunder, or (ii) if Customer ceases to do business, becomes insolvent, goes or is put into receivership or liquidation, passes a resolution for its winding up (other than for the purpose of reconstruction or amalgamation) or for any of the foregoing, makes an arrangement for the benefit of its creditors, enters into bankruptcy, suspension of payments, moratorium, reorganization or any other proceeding that relates to insolvency or protection of creditors' rights or takes or suffers any similar action in consequence of debt. Upon the termination of this Agreement for any reason, all rights granted to Customer hereunder will cease, and Customer will promptly (A) purge the Licensed Software and any related Updates from all of Customer's computer systems, storage media and other files, (B) destroy the Licensed Material and all copies thereof and (C) deliver to AquaFold an affidavit certifying that Customer has complied with these termination obligations. The provision of Sections 1, 3, 8 through 15 and 17 shall survive the termination of this Agreement.

**11. U.S. EXPORT RESTRICTIONS** – Customer acknowledges that the Licensed Materials and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Customer covenants and agrees to comply with all import and export control regulations of the United States with respect to the Licensed Material. Customer acknowledges that it may not re-export or divert the Licensed Material or any related technical information, document or material, or direct derivatives thereof, to any country set forth on the U.S. Department of Commerce's list of State Sponsors of Terror (currently, Iran, North Korea, Cuba and Syria), including any future changes to the government's list of State Sponsors of Terror.

**12. EQUITABLE RELIEF** – The parties recognize that Sections 5, 9, 11 and 13 are necessary for the protection of the business and goodwill of the parties and are considered by the parties to be reasonable for such purpose. The parties agree that any breach of such Sections would cause the other party substantial and irreparable damage and therefore, in the event of any such breach, in addition to other remedies which may be available, the non-breaching party shall have the right to seek specific performance and other injunctive and equitable relief in a court of law.

### **13. REPORTING & AUDIT; TRUE-UP TERMS**

- (a) **Reporting and Audit.** – AquaFold reserves the right to gather data on license usage by Customer for each item of Licensed Software, including License Key numbers, server IP addresses, email addresses of users, domain counts and other information deemed relevant, to ensure that the Licensed Software is being used in accordance with the terms of this Agreement. AquaFold expressly prohibits domain count overrides without prior written approval. Customer hereby consents to AquaFold gathering and processing such usage information and agrees not to block, electronically or otherwise, the transmission of data required for compliance with this Agreement. Any unauthorized use of the Licensed Software by Customer or other use by Customer in violation of the restrictions contained in this Agreement shall be deemed a material breach of this Agreement. In addition to the foregoing, within ten (10) business days of Customer's receipt of AquaFold's written request, Customer shall provide to AquaFold a written report certifying to AquaFold the number of licenses for Licensed Software installed, used or accessed by Customer, the identity of the applicable servers, hardware or computers upon which such licenses are installed and, as applicable, the total number of servers, the total number of users and the highest number of Threads simultaneously executed with respect to such Licensed Software, in each case for the time period so specified in AquaFold's written request, together with such other information as may be requested by AquaFold and necessary to confirm Customer's compliance with the terms of this Agreement. The auditing, reporting and certification rights and obligations set forth in this Section 13(a) shall survive termination of this Agreement for a period of eighteen months.

- (b) **True-Up Terms** – The terms and conditions set forth in this Section 13(b) shall apply to Customer only with respect to Licensed Software for which AquaFold has issued to Customer a valid Unrestricted License Key ("Flex Software"). Unless otherwise set forth in the Purchase Order pursuant to which Customer received an Unrestricted License Key, at least fifteen (15) days prior to the last day of each applicable calendar quarter but not more than thirty (30) days prior to the last day of each applicable calendar quarter, Customer shall perform and complete a self-audit (a "Self-Audit") consisting of (i) performing an inventory scan of all computing systems upon which such Flex Software Product is installed and (ii) identifying, as applicable, all Servers upon which the Flex Software Product is or was installed during such calendar quarter, all users accessing such Flex Software Products (including named users) during such calendar quarter and the number of simultaneous Threads executed during such calendar quarter. Within five (5) business days of the completion of such Self-Audit, Customer shall deliver to AquaFold a true and complete written report (a "True-Up Report") setting forth, as applicable, the total number of servers and the total number of users identified with respect to such Self-Audit and the highest number of Threads simultaneously executed, as identified with respect to such Self-Audit. If the number of servers, users and/or simultaneously executed Threads set forth in such True-Up Report exceeds the number of servers, users and/or simultaneously executed Threads previously paid for by Customer in respect of such Flex Software Product (all such excess servers, users and Threads, the "Excess Usage"), Customer shall be deemed to have purchased such Excess Usage upon the last business day of such calendar quarter and AquaFold shall invoice Customer for the license fee applicable to such Excess Usage, in each case based upon AquaFold's then-current pricing, and Customer shall pay such invoiced amount within thirty (30) day of its receipt of such invoice. The auditing, reporting and certification rights and obligations set forth in this Section 13(b) shall survive termination of this Agreement for a period of six months.

**14. ENFORCEABILITY** – If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, void, invalid or illegal, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

### **15. ENTIRE AGREEMENT**

- (a) Customer acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Customer and AquaFold further agree that, subject to clause (b) below, this Agreement, together with all Purchase Orders delivered in connection herewith and all exhibits, schedules and annexes hereto, is the complete and exclusive statement of the agreement between Customer and AquaFold and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement, including any shrink-wrap agreements, click-wrap agreements or demo or trial agreements which may accompany the Licensed Material or which may have been previously in force between the parties. Subject to clause (b) below, this Agreement may not be amended, modified, supplemented or altered except by a written agreement that is signed by both parties.
- (b) **UNDER NO CIRCUMSTANCES MAY THE TERMS OF THIS AGREEMENT OR ANY AQUAFOLD PURCHASE ORDER BE AMENDED, MODIFIED, SUPPLEMENTED, ALTERED, SUPERSEDED OR REPLACED BY ANY NON-AQUAFOLD INVOICE OR NON-AQUAFOLD PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT DELIVERED BY CUSTOMER TO AQUAFOLD. EACH PARTY ACKNOWLEDGES AND AGREES THAT, SOLELY AS A CONVENIENCE TO CUSTOMER AND ONLY FOR CUSTOMER'S INTERNAL ACCOUNTING PROCEDURES, CUSTOMER MAY DELIVER TO AQUAFOLD A CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR DOCUMENT FOR ANY TRANSACTION CONTEMPLATED HEREUNDER AND THAT NO ACTION BY AQUAFOLD, INCLUDING AQUAFOLD'S DELIVERY OF ANY LICENSED MATERIALS**

OR ACCEPTANCE OF PAYMENT, SHALL BE DEEMED TO BE ACCEPTANCE OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN SUCH CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT AND SUCH TERMS AND CONDITIONS SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY AQUAFOLD PURSUANT TO A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES.

## 16. TRIAL LICENSE

- (a) If Customer is evaluating Evaluation Software (as defined below), then only the terms and conditions of this Section 16 (including those Sections of this Agreement incorporated in this Section 16 by reference) will govern Customer's temporary use of such Evaluation Software (and no other terms of this Agreement shall apply to Customer or govern Customer's use of Evaluation Software) and upon purchase of a commercial license for such Evaluation Software, this entire Agreement, exclusive of this Section 16, shall apply to Customer and govern all use of the Licensed Material.
- (b) AquaFold is the owner and provider of certain proprietary software and documentation that Customer may request to use, from time to time, on a temporary basis for the sole purpose of testing and evaluating such software prior to purchasing a commercial license for such software ("Evaluation Software"). All installation and usage of Evaluation Software by Customer requires a temporary License Key or trial License Key to be issued by AquaFold and Customer is only permitted to use Evaluation Software during the term of the temporary License Key or trial License Key issued by AquaFold.
- (c) Evaluation Software is provided to Customer solely for evaluation purposes for Customer's own testing and evaluation purposes (an "Evaluation") and upon delivering a temporary License Key or trial License Key to Customer, AquaFold hereby grants Customer a non-transferable, nonexclusive, limited license to operate and use the Evaluation Software for such Evaluation during the period commencing on the date Customer downloads the Evaluation Software and ending on the expiration of the temporary License Key or trial License Key (including any extensions thereof authorized by AquaFold, the "Evaluation Period"). Customer agrees not to cause or permit the reverse engineering, disassembly, modification, translation or decompilation of any Evaluation Software. Customer shall not copy the Evaluation Software, or create or develop any derivative software based upon the Evaluation Software.
- (d) Customer acknowledges that all Evaluation Software incorporates confidential and proprietary information developed or acquired by or licensed to AquaFold and that all results of testing of the Evaluation Software, whether performed by Customer or another third party, are confidential. In no event will Customer publish or disclose the results of any testing or performance specifications of the Evaluation Software without AquaFold's express prior written consent. Customer shall not remove or deface of any confidentiality or proprietary notice placed on the Evaluation Software. The placement of copyright notices on Evaluation Software shall not constitute publication or otherwise impair their confidential nature of such information.
- (e) **ALL EVALUATION SOFTWARE PROVIDED BY AQUAFOLD IS DELIVERED "AS IS, WHERE IS" AND AQUAFOLD SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AQUAFOLD DOES NOT WARRANT THAT THE EVALUATION SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. UNDER NO CIRCUMSTANCES WILL AQUAFOLD OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE OR WHETHER BASED ON CLAIMS BY CUSTOMER OR ANY THIRD PARTY, ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF EVALUATION**

SOFTWARE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF AQUAFOLD OR ITS AUTHORIZED REPRESENTATIVES INCURRED IN ANY ACTION OR PROCEEDING RELATING TO CUSTOMER'S USE OF EVALUATION SOFTWARE EXCEED ONE HUNDRED DOLLARS.

- (f) The Evaluation and the evaluation license granted under this Section 16 shall automatically terminate immediately upon the earliest of (i) the expiration of the Evaluation Period, (ii) the date upon which Customer purchases a commercial license for such Evaluation Software and (iii) the date upon which either party notifies the other party of its termination of the Evaluation. Upon expiration of the Evaluation Period or the Evaluation, Customer shall cease using and shall uninstall and destroy the Evaluation Software unless Customer has purchased a commercial license for such Evaluation Software on or prior to such expiration.
- (g) Sections 1, 5, 8, 11, 14, 15 and 17(a) through 17(g) of this Agreement shall be deemed incorporated by this reference in this Section 16 and the Evaluation license granted under this Section 16.

## 17. MISCELLANEOUS

- (a) Customer shall not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity, whether by contract, merger or operation of the law, without AquaFold's prior written consent. In the event of any merger of Customer or a sale of substantially all of the assets of Customer in which Customer is not the surviving entity, Customer may assign or transfer any licenses granted under this Agreement; provided, that Customer provides AquaFold with written notice of such transfer within thirty days of such merger or sale. Any assignment or delegation in breach of this Section 17(a) shall be void. This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
- (b) All notices or approvals required or permitted under this Agreement must be given in writing and delivered to the appropriate party at the address set forth in this Agreement or in any Purchase Order delivered in connection with this Agreement.
- (c) The waiver of compliance with or breach of any term or condition of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other failure to comply or breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement. Unless otherwise specified herein, the rights and remedies of AquaFold set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.
- (d) **THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES. AQUAFOLD AND CUSTOMER HEREBY IRREVOCABLY AGREE ON BEHALF OF THEMSELVES THAT THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE FOR ANY LITIGATION ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF SHALL BE IN AN APPROPRIATE FEDERAL OR STATE COURT IN THE STATE OF TEXAS LOCATED IN TRAVIS COUNTY.**
- (e) Unless otherwise specified herein, the rights and remedies of AquaFold set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.
- (f) This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership or other form of business organization or agency relationship.
- (g) Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement. This Agreement may be executed

in counterparts, all of which shall constitute one single agreement between the parties hereto.

- (h) In consideration of the mutual covenants contained herein, including the rights and licenses granted to Customer herein, the parties hereto do hereby agree that for a period of two years following Customer's most recent purchase of any licenses or services, including Maintenance Service, from AquaFold or its authorized representative, Customer shall not solicit, induce, hire, engage, or attempt to hire or engage any employee of AquaFold, or in any other way interfere with AquaFold's contractual or employment relations with any of its employees, nor will Customer hire or engage or attempt to hire or engage any individual who was an employee of AquaFold at any time during such two-year period.

[END OF AGREEMENT]