

## **End User License Agreement**

### **SaaS**

THESE TERMS AND CONDITIONS (the "**Agreement**") CONSTITUTE A BINDING AGREEMENT BETWEEN YOU AND AQUA (AS DEFINED BELOW). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO BIND SUCH ENTITY TO THIS AGREEMENT. IN ANY EVENT, REFERENCES HEREIN TO "**Customer**" MEANS YOU OR SUCH ENTITY (AS THE CASE MAY BE). "**AQUA**" SHALL MEAN (I) AQUA SECURITY SOFTWARE, INC. IN THE EVENT THAT YOU ARE A UNITED STATES OR CANADA; (II) AQUA SECURITY SOFTWARE UK LTD IN THE EVENT YOU ARE UK OR AN EEA USER; (III) AQUA SECURITY SOFTWARE SINGAPORE PTE. LTD. IF YOU ARE AN APAC USER (EXCLUDING AUS, JAPAN, INDIA); OR OTHERWISE (V) AQUA SECURITY SOFTWARE LTD.

By clicking the "I Accept" button below or by otherwise installing or using any part of the Licensed Products or Licensed Services (as defined below), Customer acknowledges these terms and conditions and represents that it has fully read and understood, and agrees to be bound by, the following (the date of such occurrence being the "**Effective Date**"): this Agreement and other supplemental terms and policies that this Agreement expressly incorporates by reference, and which are thereby made a part of this Agreement.

IF CUSTOMER DOES NOT AGREE WITH ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT, CUSTOMER MUST NEITHER CLICK "I ACCEPT" NOR INSTALL OR USE ANY PART OF THE LICENSED PRODUCTS OR LICENSED SERVICES.

By entering into the Agreement, Customer hereby irrevocably and unconditionally waives any law or regulation applicable to Customer requiring that the Agreement be localized to meet Customer's language or requiring an original (non-electronic) signature or delivery or retention of non-electronic records.

#### **1. License.**

1.1. Right to Use. Subject to the terms and conditions of this Agreement (including payment in full of applicable fees, except for evaluation purposes as described in section 3 below), Aqua grants Customer a limited, revocable, non-exclusive, non-assignable, non-transferable, and non-sublicensable license, during the license term as specified in Aqua's Platform self-registration web page or an order form executed between the parties ("**License Term**"), to: (a) access the Platform and use the Licensed Services on cloud operators solely for internal business purposes and solely in object code form, in accordance with Aqua's then-current Documentation, (b) to the extent applicable and solely with respect to certain Licensed Services, to install and use the Licensed Products, in machine-readable, object code form only, to support Licensee's use of such Licensed Services, for internal business operation, and (c) use the Documentation and any materials provided by Company in the course of performing the Licensed Services solely for the purpose of using the Licensed Services in accordance with this Agreement ("**License**").

Access to Licensed services shall be permitted subject to meeting Aqua's Technical Prerequisite Requirements as set forth in the Documentation.

In this Agreement:

"**Licensed Services**" or "**Platform**" means the cyber security software and services offered by Company which is known and marketed as Aqua Platform - SaaS Edition, installed by Company in a general cloud operator (e.g., AWS) and operated and maintained by Company, including any updates, upgrades, versions, enhancements, improvements and modifications thereto, and all related Documentation.

"**Licensed Products**" means, with respect to certain Licensed Services, the software products (known and referenced as "Aqua Enforcers" in the Documentation) which are made available by Company (and any updates, upgrades, versions, enhancements, improvements and modifications thereto), which are to

be installed at and by the Licensee and which are required for the use of certain Licensed Services, all as specified in the Documentation.

“**Documentation**” shall mean the user guides and manuals for installation of the Licensed Products and the remote access and use of the Licensed Services.

1.2. No Additional Permitted Users. Licensee shall not allow the use and access to the Licensed Services by third parties or anyone other than (i) Licensee’s employees whose duties require such access; and (ii) Licensee’s authorized consultants and subcontractors (excluding any competitors of Company) while such access will be permitted only at Licensee’s environments and only where such use is required as part of their performance of the services for Licensee. Licensee shall ensure that its employees, consultants and subcontractors comply with the terms of this Agreement and shall bear full responsibility for any act or omission by its employees, consultants or subcontractors.

**2. License Restrictions.** Except to the extent expressly permitted in this Agreement (or otherwise mandated under any law applicable to Customer), Customer shall not, and shall not permit or encourage any third party to, do any of the following: (a) copy the Software; (b) sell, assign, lease, lend, rent, sublicense, or make available the Software to any third party, or otherwise use the Software to operate in a time-sharing, outsourcing, or service bureau environment; (c) modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, and interfaces) of, the Software; (d) remove, alter, or conceal, in whole or in part, any copyright, trademark, or other proprietary rights notice or legend displayed or contained on or in the Software; (e) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Software (such as usage monitoring features); (f) make a derivative work of the Software, or use the Software to develop any service or product that is the same as (or substantially similar to) the Software; (g) disclose to the public the results of any internal performance testing or benchmarking studies of or about the Software, without first (i) sending the results and related study(ies) to Aqua, and (ii) obtaining Aqua’s written approval of the assumptions, methodologies and other parameters of the testing or study; (h) use, publish or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Software; and/or (i) access the Software and/or its servers through or use with the Software any unauthorized means, services or tools, including, without limitation, any data mining, robots, or similar automated means or data gathering and extraction tools, including, without limitation, in order to extract for re-utilization of any parts of the Software; (j) not ship, transfer, or export the Software or any component thereof or use the Software in any manner, prohibited by law, including without limitation to, sell, distribute, export, download, permit or permit use of use of the Software: (i) in or to (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Lebanon, Syria, or the Crimea Region of Ukraine and the so-called Donetsk and Luhansk People’s Republics Regions of Ukraine, (ii) to any person or entity on the U.S. Department of Commerce Denied Persons List, Entity List, or Unverified List, the U.S. State Department’s Nonproliferation Sanctions List, or on the U.S. Department of Treasury’s lists of Specially Designated Nationals (SDN) or any part owned fifty percent or more by one or more SDNs, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time, (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S., UK, EU, Australian or Israeli government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (iv) otherwise in violation of any export or import restrictions, laws or regulations of the U.S., UK, EU, Australia or Israel or any foreign agency or authority. Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Software, including without limitation the International Traffic in Arms Regulations (ITAR), 22 CFR 120 – 130, the Export Administration Regulations (EAR), 15 CFR 730 – 799, and the Foreign Assets Control Regulations (FACR), 31 CFR 500 – 599. Customer agrees to the foregoing and warrants that it or its users are not located in, under the control of, or a national or resident of any such prohibited country or named on any such prohibited party list, and Customer also represents that it shall not use, and shall not permit its users to access or use, the Software or applications in violation of any U.S. export or sanction embargo, prohibition or

restriction. Should Customer or any of its users become sanctioned by the U.S. or any other relevant government, this EULA will be immediately terminated.

### **3. Evaluation.**

Customer may sign up and access the Platform and the Licensed Services, for a limited period of 14 days, solely for trial non-production purposes, in order to determine whether Customer wishes to obtain a commercial license to the Licensed services ("**Evaluation Period**"). Customer's right to use the Licensed Services for an evaluation will be, notwithstanding anything to the contrary: (a) subject to the terms of this Agreement; and (b) on an "AS IS" basis, without warranties of any kind. Following the end of the 14-day Evaluation Period, Customer will promptly cease using and delete any such trial Licensed Services and Licensed Products from Customer's computer systems. Unless (a) upon Customer's request and subject to Aqua's sole consideration, Aqua extends the Evaluation Period for additional 14 days, or (b) Customer has subsequently purchased a subscription to a commercial license, or (b) Customer has deleted the account or notified Aqua of its intent not to do so, within 5 days following the end of the Evaluation Period; then Customer's subscription to Aqua's Platform and Licensed Services, will be converted and automatically renewed under Aqua's Developer Plan (free of charge).

### **4. Payment**

4.1. License Fees. Customer will pay the license fees stated in Aqua's Platform self-registration web page or in the order form ("**License Fees**"), and in accordance with its payment terms; *provided, however*, that if a Usage Audit (defined below) reveals a usage level above that permitted under the applicable plan Customer's subscribed to, Aqua will notify the Customer, the License Fees will be increased according to Aqua's then-current price list and Aqua will then offer Customer a more suitable plan to accommodate its actual use of the Services. For the avoidance of doubt, the foregoing mechanism shall not result in a reduction in License Fees in the event Customer's consumption level decreases below the applicable level. Unless otherwise specified in the self-registration web page or the order form, all payments are due immediately upon registration and are non-refundable and without any right of set-off. Any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of: (a) the rate of one and a half percent (1.5%) per month; and (b) the highest amount permitted by applicable law.

Customer will cooperate with Aqua in configuring and maintaining the Licensed Products to enable Aqua to monitor and receive reports regarding Customer's use and consumption levels of the Licensed services (such monitoring and reports, "**Usage Audits**").

4.2. Taxes. Amounts payable under this Agreement are exclusive of all applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, except for taxes based upon Aqua's net income. In the event that Customer is required by applicable law to withhold or deduct taxes imposed upon Customer for any payment under this Agreement, then the amounts due to Aqua will be increased by the amount necessary so that Aqua receives and retains, free from liability for any deduction or withholding, an amount equal to the sum it would have received had Customer not made any such withholding or deduction.

**5. Third Party Software.** The Software may include third party software components that are subject to open source and/or pass-through commercial licenses and/or notices (such third party programs, "**Third Party Software**" and "**Third Party Software Terms and Notices**", respectively). Some of the Third Party Software Terms and Notices may be made available to Customer in the Software, its Documentation or via a supplementary list provided by Aqua. Any covenants, representations, warranties, indemnities and other commitments with respect to the Software in this Agreement are made by Aqua and not by any authors, licensors, or suppliers of, or contributors to, such

Third Party Software. Any use of Third Party Software is subject solely to the rights and obligations under the applicable Third Party Software Terms and Notices. Notwithstanding anything in this Agreement to the contrary, Aqua does not make any representation, warranty, guarantee, or condition, and does not undertake any liability or obligation, with respect to any Third Party Software.

**6. SLA, Support Services and Professional Services.** Subject to payment of all applicable License Fees, the Company shall maintain and support the access, use and operation of the Licensed Services and Licensed Products in accordance with the Service Level Agreement and the Support Services Terms and Conditions set forth at <https://www.aquasec.com/standard-support-terms/>.

Aqua may provide certain professional services, subject to the execution of a separate services agreement and a specific order form for the procurement of professional services, as mutually agreed upon between the Parties

## **7. Confidentiality**

7.1. Each Party may have access to certain non-public or proprietary information or materials as disclosed by one Party (the "**Discloser**") to the other Party (the "**Recipient**"), whether in tangible or intangible form that: (i) are marked or communicated as confidential at the time of disclosure or within a reasonable time thereafter; or (ii) should be reasonably known to be confidential by their nature or the circumstances of their disclosure ("**Confidential Information**"). Without derogating from the foregoing, the Software and license keys shall be deemed as Aqua's Confidential Information. The Agreement and Order Form are deemed the Confidential Information of both Parties. Confidential Information will not include information or material which the Recipient can demonstrate: (a) was in the public domain at the time of disclosure by Discloser to Recipient hereunder; and/or (b) became part of the public domain after disclosure by the Discloser to Recipient hereunder, through no fault of Recipient; (c) was in the Recipient's possession at the time of disclosure by the Discloser hereunder, and was not subject to prior continuing obligations of confidentiality by Discloser to Recipient; (d) was rightfully disclosed to the Recipient by a third party having the lawful right to do so; and/or (e) was independently and rightfully developed by the Recipient without (direct or indirect) use of, or reliance upon, Discloser's Confidential Information.

7.2. In the event that Recipient is required to disclose Confidential Information of Discloser pursuant to any law or governmental or judicial order, Recipient will promptly notify Discloser in writing of such law or order and reasonably cooperate with Discloser in opposing such disclosure or obtaining such other protective measures. In any event, such disclosure made pursuant to this paragraph will be made solely to the extent required by such law or order (as the case may be).

7.3. Recipient will use Discloser's Confidential Information solely for the purpose of performing its obligations and/or exercising its rights under this Agreement and will not disclose or make available the Confidential Information to any third party, except to its employees that have a need to know such information and that are bound by obligations at least as protective as provided herein. Recipient will take measures at a level at least as protective as those taken to protect its own confidential information of like nature (but in no event less than a reasonable level) to protect Discloser's Confidential Information. Recipient will promptly notify Discloser in writing in the event of any actual unauthorized use or disclosure of any Confidential Information.

7.4. Each Party acknowledges that in the event of a breach or threatened breach of this Section 7 (*Confidentiality*) by Recipient, Discloser may suffer irreparable harm or damage for which monetary damages will be inadequate, and Discloser will, therefore, be entitled to seek injunctive relief and specific performance to enforce the obligations under this Section 7 (*Confidentiality*) without the need to post a bond.

## **8. Ownership.**

8.1. Retention of rights. As between the Parties, Aqua is, and shall remain, the sole and exclusive owner of all Intellectual Property Rights in and to the Platform, the Licensed Services and the Licensed Products, and all its copies (as well as any modifications, improvements or derivatives thereto), the Support Services, and any other products or services provided by Aqua (hereinafter, "**Aqua IPR**"). Aqua reserves all rights not expressly granted herein and except for the License, Customer is granted no other right or license in or to any Aqua IPR. Customer undertakes not to contest Aqua's ownership in the Aqua IPR. "**Intellectual Property Rights**" or "**IPR**" means any and all right, title and interest in and to patents, inventions, discoveries, copyrights, works of authorship, trade secrets, trademarks, service marks, trade dress, technical information, data, know-how, show-how, designs, drawings, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual or industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof.

8.2. Processing of Data. Aqua may collect, retain, process and use in any other manner any anonymous, de-identified, aggregated and/or non-identifiable information which is derived from the use of the Licensed Services (the "**Analytics Information**"), for Aqua's legitimate business purposes, in order to provide and improve Aqua's products and services, including for Aqua's research and development activities and expansion of Aqua's knowledge related to its products and services. Aqua shall remain the exclusive owner of the Analytics Information which shall not be deemed as confidential or proprietary information of Customer. For clarity, such Analytics Information does not in any way publicly identify Customer or any individual user as the source of such Analytics Information. For the avoidance of doubt, other than for support purposes, the Licensed Services and related services do not require Aqua to process, access or use any personally identifiable information or other data protected under applicable privacy laws (the "**Personal Data**"). Any disclosure or use of Personal Data which is required for the self-registration process and for provision of certain services, such as support services, shall be subject to the Privacy Policy which can be found at <https://www.aquasec.com/trust/product-privacy-policy/>

8.3. Processing of Personal Data. Customer hereby represents and warrants that (i) it will use its best efforts not to transfer or otherwise make available to Aqua any Personal Data, and (ii) if and to the extent notwithstanding the foregoing is required to disclosed or have disclosed Personal Data to Aqua, it has obtained all applicable permits, authorizations and/or consents as to allow the Licensed Product's and Licensed Services' operation and functionality on Customer's systems in accordance with the terms of this Agreement.

## **9. Warranties; Disclaimer.**

9.1. Warranties. Aqua represents and warrants that: (i) during the License Term it will provide the Licensed Services in a professional and workmanlike manner consistent with general industry standards and that the Licensed Products and the Licensed Services, under normal authorized use, shall perform substantially in all material aspects in accordance with the technical specification described in the Documentation; and (ii) the Licensed Products and the Licensed Services will not contain open-source software except as disclosed on the Company's website or in the Documentation. The sole and exclusive remedy of Customer for any breach of this Section 9.1 shall be to obtain from Aqua (or Aqua's designated agent or subcontractor) the repair, reinstallation, or replacement of the material non-conformity in accordance with the Service Level Agreement which is attached hereto as Schedule A and the Support Services Terms and Conditions attached hereto as Schedule B.

9.2. Exclusions. The warranties set forth above shall not apply if the failure of the Licensed Products or Licensed Services results from or is otherwise attributable to: (i) repair, maintenance or modification of the Licensed Products by persons other than Company's authorized third parties; (ii) accident, negligence, abnormal physical or electrical stress, abnormal environmental conditions, abuse or misuse

of the Licensed Products; (iii) use of or access to the Licensed Services other than in accordance with the Documentation; and/or (iv) the combination of the Licensed Products with equipment or software not authorized by Company or otherwise approved by Company in the Documentation.

9.3. OTHER THAN EXPLICITLY SET FORTH IN THIS AGREEMENT THE PLATFORM AND ANY LICENSED SERVICES AND THE LICENSED PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR QUALITY OF SERVICE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR USAGE OF TRADE) ARE HEREBY DISCLAIMED. AQUA DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, COMPLETENESS, OR QUALITY OF THE SOFTWARE, OR THAT USE OF THE PLATFORM OR LICENSED SERVICES OR LICENSED PRODUCTS WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE OR THAT ERRORS/BUGS ARE REPRODUCIBLE OR THAT ERRORS/BUGS ARE REPAIRABLE.

## **10. Limitation Of Liability**

10.1. IN NO EVENT WILL AQUA, ANY OF ITS AFFILIATES, PARTNERS, DISTRIBUTORS OR ANY OF THEIR LICENSORS AND SUPPLIERS BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, THE PLATFORM, THE LICENSED SERVICES, THE LICENSED PRODUCTS OR OTHERWISE FOR: (A) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; (B) ANY LOSS OF PROFITS, BUSINESS, ANTICIPATED SAVINGS, OR DATA AND/OR DAMAGE TO OR LOSS OF REPUTATION, OR GOODWILL; AND/OR (C) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.

10.2. THE COMBINED CUMULATIVE LIABILITY OF AQUA AND ITS AFFILIATES, PARTNERS AND ANY OF THEIR LICENSORS AND SUPPLIERS UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, THE PLATFORM THE LICENSED SERVICES, THE LICENSED PRODUCTS OR OTHERWISE, WILL NOT EXCEED THE LICENSE FEES ACTUALLY PAID BY CUSTOMER TO AQUA UNDER APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. AQUA'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN RESPECT OF ANY MAINTENANCE OR SUPPORT ISSUE SHALL BE LIMITED TO PROVISION OF SUPPORT SERVICES.

10.3. THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND: (A) EVEN IF A PARTY OR AN AFFILIATE, DISTRIBUTOR OR SUPPLIER OF AQUA HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (B) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (C) REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY).

## **11. Indemnification**

11.1. By Aqua. Aqua will defend, indemnify and hold harmless Customer against any third party demand, claim, suit, or action alleging that Customer's use of the Platform in accordance with this Agreement infringes such third party's intellectual property rights (an "**Infringement Claim**"), and

Aqua will pay any amounts finally awarded by a court against Customer (or otherwise agreed in settlement) under such Infringement Claim. Aqua will have no obligation or liability under this Section 11.111.1 to the extent that the Infringement Claim is based upon or results from: (a) the combination or use of the Platform or Licensed Services or Licensed Products with any third party products or services if the claim would not have occurred if not for such combination or use; (b) any modification to the Platform or Licensed Services or Licensed Products not made by Aqua; (c) Customer's failure to comply with the written instructions of Aqua and/or with the terms of this Agreement or the Documentation; (d) where Customer continues the alleged infringing activity after being notified thereof; (e) use or retention of a copy of the Platform or Licensed Services or Licensed Products not in its most current version provided by Aqua; and/or (f) Aqua's compliance with any Customer instructions or requirements (any such claim in clauses (a) through (d), a "**Reverse Infringement Claim**").

11.2. Remediation. Should the Platform or Licensed Services or Licensed Products (in whole or in part) become, or in Aqua's opinion be likely to become, the subject of any Infringement Claim, then Customer permits Aqua, at Aqua's option, either to: (a) obtain for Customer the right to continue using the Platform or Licensed Services or Licensed Products (or part thereof); or (b) replace or modify the Platform or Licensed Services or Licensed Products (or part thereof) so that it becomes non-infringing; *provided, however*, that if, in Aqua's opinion, the remedies in clauses (a) and (b) above are not commercially feasible, Aqua may terminate this Agreement immediately upon written notice to Customer and provide Customer with a pro-rata refund of any prepaid (but unused) License Fees based on the remaining License Term.

11.3. By Customer. Customer will defend, indemnify, and hold harmless Aqua, Aqua Affiliates, distributors and suppliers and their respective directors, officers, employees, and suppliers from and against any third party claims, demands, actions, suits, proceedings, damages, losses, judgments and/or liabilities arising from, or related to or in connection with: (a) a Reverse Infringement Claim; and/or (b) Customer's unauthorized use of the Software or breach of this Agreement (each, a "**Aqua Claim**").

11.4. Procedure. Each Party's obligation and liability under this Section (*Indemnification*) is subject to the conditions that: (a) the indemnified Party has promptly notified the indemnifying Party in writing of the Infringement Claim or Aqua Claim, as the case may be (as used in this subsection, "**Claim**"), provided that a delay or failure by the indemnified Party to provide such notice will not relieve the indemnifying Party of its obligation or liability under this Section (*Indemnification*), except to the **extent that** such delay or failure materially prejudices its ability to defend the claim; (b) the indemnified Party reasonably cooperates with the indemnifying Party and permits the indemnifying Party to assume sole control of the defense of the Claim and all negotiations for any settlement thereof, provided that Aqua will not be required to cede control of a Aqua Claim to the extent that it impacts any Aqua Intellectual Property Right or goodwill, and the indemnifying Party will not enter into any settlement of a Claim without the indemnified Party's prior express written consent, not to be unreasonably withheld, conditioned or delayed; and (c) the indemnified Party refrains from admitting any liability or otherwise compromising the defense of the Claim (in whole or in part), without the prior express written consent of the indemnifying Party.

11.5. Entire Liability. This Section (*Indemnification*) states Aqua's sole and exclusive obligation and liability, and Customer's sole remedy, with respect to any Infringement Claim.

## **12. Term and Termination**

12.1. Term. This Agreement commences as of the Effective Date and will continue in full force and effect for the duration of the License Term, unless earlier terminated in accordance with this Agreement. Except with respect to evaluation of the Platform as described in Section 3 above, this Agreement will automatically renew for successive annual periods (as applicable), unless, a Party gives written notice to the other Party of the former's intent not to renew the License Term, given at least thirty (30) days prior to the expiration thereof.

12.2. Termination. Each Party may terminate this Agreement immediately upon written notice to the other Party: (a) if the other Party commits a material breach under this Agreement and, if curable, fails



to cure that breach within thirty (30) days after receipt of written notice specifying the material breach (except that for payment defaults, such cure period will be seven days); and/or (b) if the other Party is declared bankrupt by a judicial decision, or, in the event an involuntary bankruptcy action is filed against such other Party, it has not taken, within sixty (60) days from service of such action to such Party, any possible action under applicable law for such filed action to be dismissed.

12.3. **Effect of Termination; Survival.** Upon expiration or the effective date of termination of this Agreement (as the case may be): (a) this License will automatically terminate and Customer will uninstall and permanently erase (or, if requested by Aqua, permit Aqua to uninstall and permanently erase) all copies of the Licensed Services or Licensed Products from the Customer's systems; (b) Customer will pay all outstanding fees, including any License Fees; and (c) each Party shall, at the Discloser's election, erase or return to the Recipient all Confidential Information in its possession or under its control. Sections 2 (License Restrictions), 4 (Payments), 5 (Third Party Software) and 7 (*Confidentiality*) through 13 (*Miscellaneous*) will survive the expiration or termination of this Agreement.

**13. Miscellaneous.** (13.1) **Entire Agreement.** This Agreement, and the Support Terms and Conditions represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. In entering into this Agreement, neither Party is relying on any representation not expressly specified in this Agreement. This Agreement may only be amended by a written instrument duly signed by each Party. The Section and subsection headings used in this Agreement are for convenience only. (13.2) **Name and Logo.** Aqua may use Customer's name and logo on its website and in its promotional materials to state that Customer is a customer of Aqua and an Aqua Platform user. (13.3) **Reference Customer.** Customer agrees to serve as a reference customer of Aqua with other potential customers and industry analysts. (13.4) **Case Study.** Customer agrees, in due course, to collaborate with Aqua's marketing team to create a case study of the Customer's use of the Platform. (13.5) **Assignment.** This Agreement (whether in whole or in part): (a) may not be assigned by Customer without the prior express written consent of Aqua; and (b) may be assigned by Aqua, without obligation or restriction. Any prohibited assignment will be null and void. Subject to the provisions of this Section (*Assignment*), this Agreement will bind and benefit each Party and its respective successors and assigns. (13.6) **Governing Law; Jurisdiction.** This Agreement shall be governed and interpreted in accordance with the following: (i) the laws of England and Wales if Customer is located in UK or EEA; or (ii) the laws of Delaware if Customer is located in North America or Canada; (iii) or the laws of Singapore if Customer is located in APAC (excluding AUS, Japan and India); or (v) otherwise the laws of Israel; without giving effect to principles of conflicts of law. Any claim, dispute or controversy between the Parties will be subject to the exclusive jurisdiction and venue of the competent courts located in: (i) London if Customer is based in UK or EEA; or (ii) Wilmington if Customer is based in North America or Canada; or (iii) Singapore if Customer is based in APAC (excluding AUS, Japan and India); or otherwise (iv) Tel Aviv, Israel; and Customer irrevocably consents to the jurisdiction of such courts. The parties agree that the United Nations Convention on Contracts for the International Sales of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement. The following applies to all users notwithstanding the foregoing, Aqua may seek injunctive relief in any court worldwide that has competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods is hereby disclaimed. (13.7) **Feedback.** If Customer provides Aqua with any feedback, ideas or suggestions regarding the Platform or Licensed Services ("**Feedback**"), Aqua may, at no cost, freely use such Feedback, for any purpose whatsoever and Customer hereby and shall assign all right, title and interest in and to all Feedback to Aqua upon creation thereof. For the avoidance of doubt, Feedback will not be deemed Customer's Confidential Information. (13.8) **Relationship.** The Parties are solely independent contractors. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between the Parties. Neither Party may make, or undertake, any commitments or obligations on behalf of the other. (13.9) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such provision will be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such invalidity or unenforceability), and will be substituted (in respect of such



jurisdiction) with a valid and enforceable provision that most closely approximates the original legal intent and economic impact of such provision. (13.10) Notices. All notices and communications between the Parties under, or in connection with, this Agreement ("**Notices**") shall be in writing, by hand delivery, by nationally recognized courier service or by prepaid certified mail. Aqua may send Notices to Customer through the management and reporting Module of the Software. Customer shall send all Notices to the mailing and email addresses and contact person listed in the order form, unless Customer has no order form with Aqua in which case Notices shall be sent to: Aqua Security Software Ltd., 40 Toval Street, Ramat-Gan, Israel, Attn: *Chief of Customer Officer*, Email: *Support@aquasec.com*. (13.11) Force Majeure. Except for payment obligations, neither Party will be liable for failure or delay in performance of any of its obligations under or in connection with this Agreement arising out of any event or circumstance beyond that Party's reasonable control, including without limitation an Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot, civil commotion, adverse weather condition, adverse traffic condition, strike, lock-out or other industrial action, and failure of supply of power, fuel, transport, equipment, raw materials, or other goods or services. (13.12) Customer Data; Storage. Customer acknowledges that the Software is not intended to, and will not, operate as an archive or file-storage product or service for Customer Data (as defined below), and Customer will be solely responsible for the maintenance and backup of all Customer Data. "**Customer Data**" means Customer's content, code, or data uploaded to, or otherwise processed by, the Licensed Products or Licensed Services. (13.13) Waiver. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will be valid only in the specific instance in which given.

**Last updated: February 2023**