



## MASTER TERMS OF SERVICE AGREEMENT

Aquana LLC (“AQUANA”) has developed the AQUANA Water IoT Platform (the “Service”) which is comprised of (i) a custom website (the “Site”), (ii) a mobile software application and a browser-based software application (individually and collectively, the “App” or “Apps”), (iii) “smart” valves and other hardware that is designed and/or branded by Aquana (“Aquana Devices”) and, (iv) certain devices and/or equipment manufactured and designed by third parties not affiliated with Aquana (“3P Devices”).

This Master Terms of Service Agreement (“this Agreement”), along with the Additional Terms (defined below) (collectively, the “Terms”) governs Your use of the Service, whether used in whole or in part. AQUANA may change, modify and/or update the Terms from time to time, and any such change, modification and/or update shall become effective thirty (30) days after the date AQUANA gives You notice thereof.

“You” or “Your” shall mean, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a corporation, limited liability company, partnership or other legal entity (an “Entity”), the Entity for which You are accepting this Agreement, and Your Affiliates which use the Services.

By downloading the App, visiting the Site, purchasing the Aquana Devices, or otherwise accessing or using the Service, You agree that You have read, understood, and agree to be bound by the Terms. If You do not agree, You may not use the Service.

### 1. USE OF THE SERVICE.

You are solely responsible for the use of the Service. By using or accessing the Service You acknowledge that Your use of the Service is solely at Your own risk. Your use of the Service provided by AQUANA is subject to the Terms.

### 2. ADDITIONAL TERMS.

In addition to the Terms, the following additional terms apply to Your use of the Service as if such were fully set forth in this Agreement. By using the Service, You agree to be bound by these additional terms (including any age restrictions applicable to use of a particular App or feature of the Service), as applicable, which are incorporated herein by reference and are subject to changes and additions from time to time (collectively the “Additional Terms”):

- a. Warranty, which describes AQUANA’s Device warranties and exclusions can be found at: [www.aquana.com/legal](http://www.aquana.com/legal);
- b. Privacy Policy, which describes AQUANA’s policies with respect to the collection, use, and disclosure of personal information from You can be found at: [www.aquana.com/legal](http://www.aquana.com/legal);
- c. End User License Agreement (EULA), which governs Your use of Apps You may obtain from AQUANA can be found at: [www.aquana.com/legal](http://www.aquana.com/legal);
- d. All installation, user, training and operation manuals furnished by AQUANA for any AQUANA devices; and
- e. Any additional terms or conditions AQUANA may supply from time to time which shall become effective thirty (30) days after the date AQUANA gives You notice thereof or otherwise makes such available on through the Service.



In the event of a conflict between the terms and conditions in this Agreement and the terms in any of the Additional Terms, this Agreement will control.

### 3. ORDERING AQUANA DEVICES.

- a. **Ordering, Generally.** AQUANA may make AQUANA Devices available for purchase. Any sale of AQUANA Devices is subject to the Terms, and to any applicable bill of sale or purchase agreement. You agree to pay any amounts and fees AQUANA may charge for Your purchase of the AQUANA Device or any associated Apps (a "Payment"). Before You are required to make any Payment, You will have an opportunity to review and accept the amount that You will be charged for such Payment. All Payments are in U.S. Dollars and are non-refundable, except as otherwise provided for by the Terms. Unless AQUANA and You have previously agreed in writing to a set Payment structure, AQUANA may change the Payment required for any component of the Service, including by changing the price for each AQUANA Device, on a going-forward basis, at any time. AQUANA will charge the payment method You specify at the time of purchase. You authorize AQUANA to charge all sums described herein to such payment method. If You make any applicable Payment with a credit card, AQUANA may seek pre-authorization of Your credit card account prior to Your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover Your purchase.
- b. **Returns.** No materials shall be returned to AQUANA without express written authorization from a duly authorized Aquana representative. Unused standard catalog items, delivered as orders, may be returned within 90 days of the original shipment date with proper authorization for credit or refund as determined by AQUANA if (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts, (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged, and (iii) will not cause an overstock condition at AQUANA's servicing facility. All authorized returns are subject to inspection to verify merchantability and will be assessed a 15% restocking charge. All shipping fees must be pre-paid by You. Non-catalog, surplus order returns, specialty manufactured items, and those not meeting the above conditions, will be evaluated on an individual basis after You have contacted Aquana. Special orders or non-stock items may be returned only if the manufacturer will accept the return, subject to a 30% restocking charge, shipping, and handling fees.
- c. **Shipping Your order.** After You complete Your order, AQUANA may contact You at the email address You provided during the order process to request that You provide or confirm certain information necessary to ship Your AQUANA Device(s), including but not limited to (1) the name to be associated with each AQUANA Device You ordered; and (2) the address to which each AQUANA Device You ordered should be shipped (collectively, the "Shipment Information").
- d. If You do not provide or confirm Shipment Information within 30 days of AQUANA's request for Shipment Information, AQUANA may, at its discretion, (1) cancel and refund



Your order; (2) ship Your order based on partial information, if AQUANA is able; (3) ship all units from a single order to one address, if address information has been provided or confirmed for at least one unit.

- e. If AQUANA determines, at its sole discretion, that it cannot ship an AQUANA Device using the Shipment Information You provide or confirm, AQUANA may cancel and refund Your order.

#### 4. LICENSE GRANT.

Subject to the Terms, AQUANA grants You a limited, non-exclusive, term-limited, non-sublicensable, revocable license to use any software that is provided by AQUANA that is pre-installed on, embedded in or incorporated into the AQUANA Device (“Embedded Software”) solely in connection with Your use of the Service.

#### 5. FEES

- a. Fees. You will pay all fees specified on your order form. Except as otherwise specified herein, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are noncancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- b. Fees for subscription services shall begin upon device activation. Fees are prorated for the remaining calendar year, and then invoiced annually for the upcoming year.
- c. Invoicing and Payment. Refer to Your order form for Invoicing and Payment terms.
- d. Price Changes. AQUANA reserves the right to change pricing and/or pricing plans which will become effective at Your next renewal date provided that notice of the change is provided to You at least 30 (thirty) days in advance of the renewal date.
- e. Overdue Charges. If any invoiced amount is not received by AQUANA by the due date and is not disputed in good faith, then without limiting AQUANA’ rights or remedies, (a) those charges may accrue late interest at the rate of up to 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) AQUANA may limit or cancel future orders and/or require credit card payments. To dispute an invoice in good faith, You are required to provide AQUANA with written notice of your dispute and also provide details that are reasonably sufficient for AQUANA to understand the basis of Your dispute, and such must be received by AQUANA prior to the due date. Failure to provide the notice and details as required above shall be a deemed affirmation by You that the invoice is accurate, due, and payable.
- f. Suspension of Service. If any amount owing by You under this or any other agreement with AQUANA is 30 or more days overdue and is not disputed in good faith, AQUANA may, without limiting AQUANA’s other rights and remedies, suspend the Services to You until such amounts are paid in full. AQUANA will give You at least 10 days’ prior



notice that Your account is overdue, before suspending Services to You. If AQUANA suspends Services due to non-payment, AQUANA may require pre-payment prior to providing future access to the Services. YOU HEREBY AGREE AND ACKNOWLEDGE THAT IN THE EVENT AQUANA SUSPENDS SERVICES PURSUANT TO THIS AGREEMENT, AQUANA SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO YOU FOR ANY DAMAGES OF ANY CHARACTER OR KIND TO INCLUDE, BUT NOT LIMITED TO, DIRECT, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, AND YOU HEREBY RELEASE AQUANA FROM ALL LIABILITY THEREFORE.

- g. Taxes. AQUANA fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If AQUANA has the legal obligation to pay or collect Taxes for which You are responsible under this Section 5.f. AQUANA will invoice You and You will pay that amount unless You provide AQUANA with a valid tax exemption certificate authorized by the appropriate taxing authority.
- h. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by AQUANA regarding future functionality or features.

## 6. ACCOUNT INFORMATION & RESPONSIBILITIES OF REGISTERED USERS.

- a. Account Information. For security purposes, in order to access the Service, You will have to create an account and verify Your identity to help make sure that You only have the given access permissions to a platform account. You hereby represent and warrant that the information You provide to AQUANA upon registration will be true, accurate, current, and complete and that You will only access the account that belongs to You. You also hereby represent and warrant that You will ensure that this information is kept accurate and up-to-date at all times.
- b. Password. As a registered user, You will be required to create login information, including a username and password. Your account is personal to You, and You may not share Your account information with, or allow access to Your account by, any third party. As You will be responsible for all activity that occurs under Your access credentials, You should preserve the confidentiality of Your username and password. If You have any reason to believe that Your account information has been compromised or that Your account has been accessed by a third party, You agree to immediately notify AQUANA by e-mail at [support@aquana.com](mailto:support@aquana.com). You are solely responsible for any losses, claims, or damages due to any unauthorized use of Your account.

## 7. LINKED ACCOUNTS.

Some Apps and features of the Service may allow You to link Your account(s) on the Service to Your accounts on third party services ("Integrated Services"). You may be given the option to link Your account on the Service to an account on an Integrated Service. If You link Your account on the Service to an account on an Integrated Service, You are authorizing AQUANA to store



and use Your access credentials to access Your account on Your behalf as Your agent to integrate Your experience with the Service with content, information, and features available through such Integrated Services. Use of Integrated Services through the Service in this manner may be subject to additional terms established by the applicable third parties providing the Integrated Services, and it is Your sole responsibility to comply with such third party terms.

#### 8. THIRD PARTY CONTENT.

- a. General. AQUANA may contain or display through the Service various materials and content from third parties (“Third Party Materials”). The display on or through the Service of such Third Party Materials does not in any way imply, suggest, or constitute any sponsorship, endorsement, or approval by AQUANA of any third party or any affiliation between any such third party and AQUANA. Furthermore, in using and accessing the Service, You agree that AQUANA is in no way responsible for the accuracy, timeliness, or completeness of Third Party Materials. AQUANA’s display of specific Third Party Materials does not suggest a recommendation by AQUANA of the third party or any products, services, websites or plans offered. Your interaction with any third party accessed through the Service (whether online or offline) is at Your own risk, and AQUANA will have no liability with respect to the acts, omissions, errors, representations, warranties, breaches or negligence of any such third party or for any personal injuries, death, property damage, or other damages or expenses resulting from Your interactions with the third party.
- b. Third Party Links and References. The Service may contain references or links to third-party materials and websites not controlled by AQUANA. AQUANA provides such information and links as a convenience to You and such links and references should not be considered endorsements or recommendations of such sites or any content, products or information offered on such sites. You acknowledge and agree that AQUANA is not responsible for any aspect of the information or content contained in any third party materials or on any third party sites accessible or linked from the Service.

#### 9. USE RESTRICTIONS.

AQUANA does not allow the use of the Service that (a) is illegal, (b) is abusive, (c) that interferes with or interrupts the proper functioning of the Service, or (d) that is affected through the use of any bot, crawler, spider, or other automated processes. If You violate any provision of the Terms, Your permission to use the Service will terminate automatically. Additionally, AQUANA, in its sole discretion may terminate Your user account on the Service or suspend or terminate Your access to the Service at any time, with or without notice. AQUANA also reserves the right to discontinue the Service at any time without notice to You. You may terminate Your account at any time by contacting AQUANA Support at [support@aquana.com](mailto:support@aquana.com). Upon termination, subject to AQUANA’s rights pursuant to Section 14 below, You will be entitled to a pro-rated refund of any prepaid amounts and will not have any further payment obligations to AQUANA.

#### 10. SITE RESTRICTIONS.

You agree not to use the Service or any aspect or feature thereof for any unlawful purpose or in



any way that might harm, damage, or disparage any other party. Without limiting the proceeding sentence, You agree that You will not do, or attempt to do, any of the following:

- a. Reproduce, duplicate, copy, sell, trade, resell, distribute or exploit, any part of the Service, use of the Service, access to the Service, or content obtained through the Service for any purpose other than for Your authorized use of the features of the Service that You have fully paid for, in accordance with all applicable Terms;
- b. access or use the Service for any comparative or competitive research purposes;
- c. remove, circumvent, disable, damage or otherwise interfere with any security-related features of the Service, or features that enforce limitations on the use of the Service or any content therein;
- d. use any manual or automated means to extract and/or compile content from the Service for any commercial purpose or otherwise;
- e. interfere with or disrupt the Service, networks or servers connected to the Service, or violate the regulations, policies or procedures of such networks or servers;
- f. undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, x-raying, disassembling or hacking of all or part of the Service or any other part thereof, except and solely to the extent permitted by law, or otherwise attempt to use or access any of the Service other than as intended; or
- g. use the Service in any manner whatsoever that could lead to a violation of any international, foreign, federal, state or local laws, rules or regulations.

You expressly agree to abide by all the foregoing restrictions, except to the extent any foregoing restriction is prohibited by law.

#### 11. RESERVATION OF RIGHTS.

The Service is owned and operated by AQUANA. The software, content, visual interfaces, interactive features, information, trademarks, logos, graphics, design, compilation, computer code, hardware products, software, services, content, and all other elements of the Service ("AQUANA Materials"), are protected by copyright, trade dress, patent, and trademark laws of the United States and other jurisdictions, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. All AQUANA Materials, including intellectual property rights therein and thereto, are the property of AQUANA or its subsidiaries or affiliated companies and/or third-party licensors. You may not sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the AQUANA Materials. AQUANA reserves all rights not expressly granted in the Terms. You shall not acquire any right, title or interest to the AQUANA Materials, whether by implication, estoppel, or otherwise, except for the limited rights set forth in the Terms.

#### 12. TERM AND TERMINATION.

The Terms will remain in effect until terminated. Your rights and licenses under the Terms will terminate immediately upon Your breach of the Terms. You may terminate the Terms by



canceling Your account with AQUANA and, if applicable, uninstalling and ceasing use of the Apps and Website. AQUANA may terminate the Service, disable any App, and/or the Terms, or limit or terminate Your access to the Service at any time for any reason or no reason at all. Upon termination, subject to AQUANA's rights pursuant to Section 14 below, You shall be entitled to a pro-rated refund of prepaid amounts and will not have any further payment obligations to AQUANA. Sections 2-3 and 9-17 shall survive the termination of this Agreement for any reason, along with any provisions of the Additional Terms that expressly by their terms survive. Notwithstanding anything to the contrary above, AQUANA and You may agree to a given period of time for which the Terms will remain in effect which agreement shall be set forth on the applicable order form. YOU HEREBY AGREE AND ACKNOWLEDGE THAT IN THE EVENT AQUANA EXERCISES ITS RIGHTS PURSUANT TO THIS SECTION 12, AQUANA SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO YOU FOR ANY DAMAGES OF ANY CHARACTER OR KIND TO INCLUDE, BUT NOT LIMITED TO, DIRECT, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, AND YOU HEREBY RELEASE AQUANA FROM ALL LIABILITY THEREFORE.

You acknowledge and agree that Aquana may collect and use data about Your use of the Service and that Aquana may use and publish this data in an aggregate form (but excluding any information which identifies You as set forth in our Privacy Policy ("Aggregated Anonymous Data")) for any business purpose, during and after the term of this Agreement. You agree that upon termination of this Agreement for any reason, Aquana shall be entitled to retain and use such Aggregated Anonymous Data.

### 13. MODIFICATIONS.

AQUANA reserves the right, in its sole discretion, to add, remove, or modify features of the Service at any time for any reason without liability. Aquana will notify You of any material changes to the Services thirty (30) days prior to deployment, which may be made by posting such notice to the Service. No modifications to the Terms will apply to any dispute between You and AQUANA that arose prior to the effective date of such modification. Aquana reserves the right to modify and/or change the Terms at any time and without prior notice. If Aquana materially modifies the Service or the Terms, it will make reasonable efforts to notify you of the change. For example, Aquana may send a message to your email address, if we have one on file, or generate a pop-up or similar notification when you access the Service for the first time after such material changes are made. Your use of the Service after modifications to the Terms become effective constitutes Your binding acceptance of such changes. If You are dissatisfied with any additions, removals, or modifications to the Terms, then You agree that Your sole and exclusive remedy is to discontinue any use of the Service.

### 14. INDEMNITY.

- a. YOU AGREE THAT YOU WILL BE RESPONSIBLE FOR YOUR USE OF THE SERVICE AND AQUANA DEVICES, AND YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS AQUANA AND ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONSULTANTS, AFFILIATES, SUBSIDIARIES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, THE "AQUANA ENTITIES") FROM AND AGAINST ANY AND ALL LOSSES (DEFINED BELOW), ARISING OUT OF OR IN ANY WAY CONNECTED WITH (I) YOUR USE OF, OR ALLEGED USE OF, THE SERVICE AT ANY TIME; OR (II) YOUR VIOLATION OF THE TERMS, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION, WARRANTY, OR AGREEMENTS CONTAINED OR REFERENCED HEREIN, OR



ANY APPLICABLE LAW OR REGULATION. “**LOSSES**” MEANS ALL DAMAGES, AWARDS, JUDGMENTS, ASSESSMENTS, FINES, SANCTIONS, PENALTIES, CHARGES, COSTS, EXPENSES, PAYMENTS, ALL COSTS AND EXPENSES OF INVESTIGATING ANY CLAIM, ALL REASONABLE ACTUAL OUTSIDE ATTORNEYS’ FEES INCURRED IN CONNECTION THEREWITH, WHETHER OR NOT SUCH CLAIM IS ULTIMATELY DEFEATED AND ALL AMOUNTS PAID INCIDENT TO ANY COMPROMISE OR SETTLEMENT OF ANY SUCH CLAIM, LAWSUIT OR ARBITRATION.

- b. ANYTHING IN THE TERMS TO THE CONTRARY NOTWITHSTANDING, THE MAXIMUM AGGREGATE LIABILITY, IF ANY, OF AQUANA (WHETHER ARISING IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY, BREACH OF CONTRACT OR OTHERWISE) UNDER OR IN CONNECTION WITH THE TERMS OR THE SERVICE SHALL BE LIMITED TO AN AMOUNT EQUIVALENT TO ONE HUNDRED PERCENT (100%) OF THE TOTAL PAYMENTS RECEIVED BY AQUANA FROM YOU IN RESPECT OF THE SERVICE GIVING RISE TO THE CLAIM DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM FIRST ACCRUED, AND YOU HEREBY RELEASE AQUANA FROM ALL FURTHER LIABILITY, LOSS, COST AND EXPENSE IN EXCESS OF SUCH AMOUNT. THE WAIVERS, RELEASES, LIMITATIONS ON LIABILITY AND ON REMEDIES EXPRESSED IN THIS AGREEMENT SHALL APPLY EVEN IF (i) ARISING IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY, BREACH OF CONTRACT OR OTHERWISE, OR (ii) YOUR REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE, AND, IN ALL CASES, SHALL EXTEND TO AQUANA’S AFFILIATES AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES.

#### 15. INSURANCE.

During the Term of this Agreement, You agree to maintain, at Your expense, liability insurance in quantities and types customary for Your industry including coverage for property damage caused by the failure of electronic, or internet devices.

#### 16. DISPUTE RESOLUTION.

- a. Generally. In the interest of resolving disputes between You and AQUANA in the most expedient and cost-effective manner, You and AQUANA agree that any and all disputes arising out of or relating in any way with the Terms or Your use of the Service shall be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes, but is not limited to all claims arising out of or relating to any aspect of the Terms or the Service, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of the Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THE TERMS, YOU AND AQUANA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to Your use of the Services or under the Terms must be filed by either party within two (2) years after the party should reasonably have known of such claim or cause of action or it will be forever barred.
- b. Exceptions. Notwithstanding subsection 17.a, we both agree that nothing herein shall be





deemed to waive, preclude, or otherwise limit either of our rights to (i) bring an individual action in small claims court, (ii) pursue enforcement of judgment actions through applicable federal, state, or local agencies where such actions are available, (iii) seek injunctive relief in a court of law, or (iv) to file suit in a court of law to address intellectual property infringement claims.

- c. Arbitrator. Any arbitration between You and AQUANA will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by the Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1–800–778–7879, or by contacting AQUANA.
- d. Notice; Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required)(“Notice”). AQUANA’s address for Notice is AQUANA, Inc., 1099 Plunkton Road, Warren, Vermont 05674. The Notice must (a) describe the nature and basis of the claim or dispute and (b) set forth the specific relief sought (“Demand”). AQUANA agrees to use good faith efforts to resolve the claim directly, but If we do not reach an agreement to do so within 30 days after the Notice is received, You or AQUANA may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by You or AQUANA shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any; provided that if our dispute is finally resolved through arbitration in Your favor, AQUANA shall pay You the amount awarded by the arbitrator.
- e. Fees. In the event that You commence arbitration in accordance with the Terms, AQUANA will reimburse You for Your payment of the filing fee, unless Your claim is for greater than \$10,000, in which case the payment of any fees shall be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon in Burlington, Vermont, provided that if the claim is for \$10,000 or less, the party requesting relief may choose whether the arbitration will be conducted through binding non-appearance-based arbitration. This non-appearance-based arbitration must comply with the following rules: (a) the arbitration shall be conducted by telephone, online, and/or be solely based on written submissions (the specific manner shall be chosen by the party initiating the arbitration); (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator shall be final and may be entered in any court of competent jurisdiction. If the arbitrator finds that either the substance of Your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In such case, You agree to reimburse AQUANA for all monies previously disbursed by it that are otherwise Your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator’s ruling on the merits.

- f. No Class Actions. YOU AND AQUANA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR AQUANA'S INDIVIDUAL CAPACITY, AS THE CASE MAY BE, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both You and AQUANA agree otherwise, the arbitrator may not consolidate more than one person or entity's claims, and may not otherwise preside over any form of a representative or class proceeding.
- g. Enforceability. If only Subsection 16.f of this Section 16 or the entirety of this Section 16 is found to be unenforceable, then the entirety of this Section 16 shall be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 17 shall govern any action arising out of or related to the Terms.

## 17. MISCELLANEOUS.

- a. Governing Law. The Terms, whether interpreted in a court of law or in arbitration, shall be governed by the laws of the State of Vermont as they apply to agreements entered into and to be performed entirely within Vermont by Vermont residents regardless of Your state or country of origin or where You access the Services, and without regard to conflict of law principles or the United Nations Convention for the International Sale of Goods.
- b. Jurisdiction and Venue. To the extent that any lawsuit or court proceeding is permitted hereunder, You and AQUANA agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Vermont for the purpose of litigating all such claims or disputes.
- c. Entire Agreement. The Terms (including the various additional terms incorporated herein by reference) constitute the entire agreement between You and AQUANA, and supersedes any and all prior agreements, negotiations, or other communications between You and AQUANA, whether oral or written, with respect to the subject matter hereof, and, except as expressly provided herein, cannot be modified except in writing signed by both parties.
- d. Severability. In the event that any provision of the Terms is held to be invalid or unenforceable, then: (a) such provision shall be deemed reformed to the extent strictly necessary to render such provision valid and enforceable, or if not capable of such reformation shall be deemed severed from the Terms; and (b) the validity and enforceability of all of the other provisions hereof, shall in no way be affected or impaired thereby.
- e. Compliance with Laws. You agree to abide by all applicable laws in Your use of the Service, including export control laws and similar regulations governing the transfer of software and other technology outside of the United States or other jurisdictions.
- f. Assignment. You may not assign the Terms without the prior written consent of AQUANA, whether expressly or by operation of law, including in connection with a merger or change of control, and any such attempted assignment shall be void and of



no effect. If you desire to assign the Terms to any successor in interest or third party, you shall give AQUANA prompt written notice thereof, and AQUANA may or may not agree to such assignment in its sole discretion. AQUANA may assign the Terms without restriction to any affiliate of AQUANA or to any person or entity acquiring all or substantially all of the assets of AQUANA. Subject to the foregoing, the Terms shall be binding on the parties and their respective successors and permitted assigns.

- g. Force Majeure. You acknowledge and understand that if AQUANA is unable to provide the Service as a result of a force majeure event AQUANA will not be in breach of the Terms. A force majeure event means an event or circumstance which is beyond the commercially reasonable control and without the fault or negligence of AQUANA and which by the exercise of reasonable diligence AQUANA was unable to prevent.
- h. Waiver. The failure to exercise, or delay in exercising, a right, power or remedy provided in the Terms or by law shall not constitute a waiver of that right, power or remedy. Either party's waiver of any obligation or breach of the Terms shall not operate as a waiver of any other obligation or subsequent breach of the Terms.
- i. Consent to Electronic Communications. By using the Service, You consent to receive certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about Your choices regarding our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to You electronically will satisfy any legal communication requirements, including that such communications be in writing.
- j. Export. The AQUANA Device and Service may be subject to United States export controls. You may not export or re-export an AQUANA Device or any element of the Service without (a) the prior written consent of AQUANA, (b) complying with any applicable export control laws, and (c) obtaining all appropriate permits and licenses. In any event, You may not transfer or authorize the transfer of the AQUANA Device to a prohibited territory, country organization, or person (currently including, without limitation Cuba, Iran, Libya, North Korea, Sudan and Syria and any organization or person named on the United States' Commerce Department's "Denied Parties List") or otherwise in violation of any applicable restrictions or regulations. You understand and agree that the AQUANA Device and Service may contain information that is controlled and restricted from export by United States export controls (the "Controlled Information"). If AQUANA, in its sole discretion, determines that it cannot implement the Service in a manner to exclude access to Controlled Information where required, if You are in a country or territory that is subject to such regulation, You shall not be provided access to the Service.

## 18. CONTACTING AQUANA.

For Sales:

[sales@aquana.com](mailto:sales@aquana.com)

+1.888.404.2782 (AQUA)

For Support:



If you've purchased your system through an Aquana Reseller, please contact them directly for support.

If you've purchased your system directly from Aquana:

You can create a support ticket in the Help section of the Aquana Web Application, or contact support:

[support@aquana.com](mailto:support@aquana.com)

+1.888.404.2782 (AQUA)