



Software License Agreement

This Software License Agreement (the "**Agreement**") is entered into and made effective as of the date specified in the Purchase Order or similar document (the "**Effective Date**"), by and between Aqua Security Software, Inc., a Delaware corporation, with its principal place of business at 800 District Avenue, Suite 510, Burlington, MA 01803, USA ("**Aqua**"), and the Government Order Activity, with its principal place of business at specified in the Purchase Order or similar document ("**Customer**"). The parties herein may be referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Aqua is the developer and provider of a proprietary security scanning and monitoring solution for virtual containers; and

WHEREAS, Customer wishes to obtain, and Aqua is willing to grant, a license to use the Software on the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

"**Affiliate**" means, with respect to any entity, any other present or future entity Controlling, Controlled by, or under common Control with such entity. "**Control**" for purposes of this definition means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

"**Agent**" means a software component installed on every docker ("Docker") machine at the Host level that provides visibility and control to all containers running on that machine.

"**Container**" means an Image that is running on a container engine host.

"**Documentation**" means the manuals, specifications, and similar documentation accompanying the Software or otherwise made available by Aqua.

"**End User**" means a person, company, or other legal entity licensed to use the Licensed Software for its own internal purposes and not for distribution to, or use on behalf of, others.

"**Environment**" means the Customer's on-premises, private cloud, or other installation environment.

"**Host**" means the physical or virtual machine on which the Software is installed (including without limitation server, host, node and Docker).

"**Image**" means a self-contained software that is packaged through the Docker and other image formats.

"**Intellectual Property Rights**" 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.

"**License Term**" means the subscription-based term of the License stated in the Purchase Order.



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"**Modules**" means the modules, tools, and/or features of the Software.

"**Aqua Console**" means the management and reporting Module of the Software.

"**Professional Services**" means installation, customization, integration, training, or other professional services.

"**Purchase Order**" means the ordering document the Parties have signed and entered into in respect of the Software (including any revisions or renewals thereof that were approved in writing by both Parties).

"**Scan**" means a process of identifying security vulnerabilities in an Image.

"**Software**" means Aqua's software product identified in the Purchase Order. References herein to "Software" include the Documentation, as well as any Updates (as defined in the Support TCs referenced in Section 9 below) made available to Customer pursuant to any Support Services (as defined below).

2. **License**

2.1 **Grant**. Subject to the terms and conditions of this Agreement, Aqua grants Customer a limited, non-exclusive, non-assignable, non-transferable, and non-sublicensable license, during the License Term, to do the following for internal business use only (collectively, the "**License**"):

- (a) install the Software (in object code only) in the Environment(s) and on such number of Hosts/Agents specified in the Purchase Order;
- (b) access and use those Modules permitted (and in the quantities permitted) under the Purchase Order; and
- (c) make a reasonable number of copies of the Software for disaster recovery, backup and archival purposes (i.e., "Non-Production Use"), provided that such copies are returned or destroyed (at Aqua's option) upon termination of the applicable License Term.

2.2 **Title; No other Licenses**. For the avoidance of doubt, the copy(ies) of the Software are only licensed under this Agreement, and no title in or to such copy(ies) (or the Software itself) pass to Customer. Except for the License, Customer is granted no other right or license in or to the Software, whether by implied license, estoppel, patent exhaustion, operation of law, or otherwise.

This Agreement shall supersede any click-through end user license agreement ("EULA") and evaluation license (pursuant to a Software License Evaluation Agreement), as of the Effective Date and shall apply to the Subscriptions and Software set forth on Exhibit B (or Exhibit) and/or Purchase Order for the applicable Term.

3. **License Restrictions**

3.1. **Prohibited Acts**. 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,



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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 (x) sending the results and related study(ies) to Aqua, and (y) 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. Customer shall 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 or download the Software: (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Lebanon, Syria, or the Crimea Region of Ukraine (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. 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 (d) otherwise in violation of any export or import restrictions, laws or regulations of the U.S. or any foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The foregoing are limitations on the scope of the License.

4. **Installation.** Aqua will notify Customer (email acceptable) when the Software is available for installation, and Aqua's licensing server will issue Customer the relevant license key(s) (which, for the avoidance of doubt, will be deemed Aqua's Confidential Information). Customer will be responsible for the installation, including without limitation: (a) all configurations (including without limitation to the Environment and other third-party systems) in connection therewith; and (b) for providing Aqua with (as well as procuring for Aqua the right to access and use) all information, materials, facilities, and equipment reasonably requested by Aqua for the purposes of installation. In addition, Customer will cooperate with Aqua in configuring and maintaining the Software's remote connectivity Module to enable Aqua to monitor and receive reports regarding Customer's use and consumption levels of the Software (such monitoring and reports, "Usage Audits").
5. **Professional Services.** Customer acknowledges and agrees that nothing in this Agreement obligates Aqua to provide any Professional Services. In the event Customer wishes to receive Professional Services with respect to the Software or otherwise, the Parties shall enter into a separate services agreement and (a) the Professional Services shall be charged in accordance with Aqua's then-current rates or the authorized rates specified in the GSA Multiple Award Schedule (MAS) Contract, as applicable, (the "**Professional Services Fees**"); (b) the Parties will enter into a statement of work ("**SOW**") specifying the Professional Services to be performed.
6. **Payment**
 - 6.1. **License Fees.** Customer will pay the Software license fees ("**License Fees**") stated in the Purchase Order, and in accordance with its payment terms; *provided, however*, that if a Usage Audit reveals a usage level above that permitted in the Purchase Order, the GSA MAS Contractor or Aqua may invoice Customer for the excess usage according to Aqua's then-current price list or the authorized



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rates specified in the applicable GSA MAS Contract, as applicable, (and as otherwise specified in the Purchase Order for such excessive use). 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 level purchased under the Purchase Order.

- 6.2. **Late Payment.** Aqua shall be paid in accordance with the payment terms set out in the applicable Purchase Order. Unless otherwise provided in the relevant Purchase Order, invoiced amounts for which no due date is otherwise established will be due and payable within thirty (30) days from receipt of an undisputed invoice. Unless otherwise specified in the Purchase Order, all payments are non-refundable, and are 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. Notwithstanding the preceding, payments shall be made in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(g) Invoice and (i) Payment and the Prompt Payment Act.
- 6.3. **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. Notwithstanding the preceding, the identification and payment of taxes shall be in accordance with GSAR 552.212-4(k) Taxes and GSAR 552.212-4(w)(1)(x) Taxes or Surcharges.
7. **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 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.
8. **Support Services.** Subject to Customer's timely payment of the support and maintenance fees stated in the Purchase Order ("**Support Fees**"), Aqua will provide the support and maintenance services ("**Support Services**") in accordance with the terms and conditions attached hereto as Exhibit A and set forth at <http://www.aquasec.com/support-terms> ("**Support TCs**").
9. **Confidentiality**
 - 9.1. As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**", or "**Discloser**") to the other Party ("**Receiving Party**", or "**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer shall include the Customer Data. Confidential Information of Aqua shall include the Software and Documentation; Confidential



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Information of each Party shall include all Exhibits and attachments. Confidential Information will not include information or material which Recipient can demonstrate: (a) was in the public domain at the time of disclosure by Discloser to Recipient hereunder; (b) became part of the public domain after disclosure by 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 Recipient to Discloser; (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.

- 9.2. Recipient will use the Discloser's Confidential Information solely for the purpose of Recipient performing its obligations and/or exercising its rights under this Agreement. Recipient will not disclose or make available the Discloser's Confidential Information to any third party, except to its employees, legal advisors, and potential investors that have a need to know such information and that are bound by obligations at least as protective as provided herein. Recipient will remain liable at all times for the acts or omissions of said recipients. 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 the Discloser's Confidential Information from disclosure to a third party or other unauthorized use. Recipient will promptly notify Discloser in writing in the event of any actual or suspected unauthorized use or disclosure of the Discloser's Confidential Information.
- 9.3. In the event that Recipient is required to disclose Confidential Information of the Discloser pursuant to any law or governmental or judicial order, Recipient will promptly notify the Discloser in writing of such law or order and reasonably cooperate with the 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). Notwithstanding the preceding, Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by Aqua.
10. **Ownership.** As between the Parties, Aqua is, and shall remain, the sole and exclusive owner of all Intellectual Property Rights in and to the Software 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 ("**Aqua Intellectual Property rights**"). Aqua reserves all rights not expressly granted herein. Customer undertakes not to contest Aqua's ownership in the **Aqua Intellectual Property Rights**.
11. **Warranty; Disclaimer.** Aqua warrants to Customer that the Software will materially perform the functions described in the technical specifications included in the Documentation for a period of sixty (60) days commencing upon the Effective Date (the "**Warranty**" and "**Warranty Period**", respectively). The following are excluded from the foregoing Warranty: (a) the Software has not been properly installed, operated, repaired or maintained in accordance with the Documentation and the written instructions of Aqua; (b) the Software has been modified by persons other than Aqua or its authorized representatives; and (c) any error or failure related to the Environment. Customer's sole and exclusive remedy, and Aqua's entire obligation and liability, for a Warranty claim under this Section will be for Aqua to make commercially reasonable efforts to promptly (within ten (10) business days) provide a fix, patch or workaround (which may be included in a future Update) for reproducible defects in the Software reported to Aqua in writing, all at no additional charge to Customer; *provided, however*, that (A) the Warranty claim is made in writing, with sufficient detail, within the Warranty Period; (B) Aqua determines that the defect is not due to any misuse, abuse, neglect, negligence, or unauthorized repair or



modification of the Software; and (C) the failure or error is reproducible by Aqua. Any fix, patch, or workaround provided as part of the foregoing remedy will not re-commence the Warranty Period and are warranted for the remainder of the Warranty Period, as then in effect.

EXCEPT TO THE EXTENT PROVIDED OTHERWISE IN THIS SECTION 11, THE SOFTWARE AND ANY SERVICES 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 AND FITNESS FOR A PARTICULAR PURPOSE. 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 SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

12. LIMITATION OF LIABILITY

- 12.1. NEITHER PARTY, INCLUDING THEIR AFFILIATES, SHALL BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, THE SOFTWARE 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. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.
- 12.2 EXCEPT AS OTHERWISE SPECIFIED HEREIN, THE COMBINED CUMULATIVE LIABILITY OF AQUA AND AQUA AFFILIATES AND ANY OF THEIR LICENSORS AND SUPPLIERS UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, THE SOFTWARE OR OTHERWISE, WILL NOT EXCEED THE LICENSE FEES ACTUALLY PAID BY CUSTOMER TO AQUA UNDER THE APPLICABLE PURCHASE ORDER.
- 12.3 THE PRECEDING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO BREACHES OF CONFIDENTIALITY, MISAPPROPRIATION OR BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AND OBLIGATIONS PURSUANT TO SECTION 13 (INDEMNIFICATION) HEREIN.
- 12.4 THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND: (A) EVEN IF A PARTY OR AN AQUA AFFILIATE 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).



13. Indemnification

- 13.1. 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 Software 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 13.1 to the extent that the Infringement Claim is based upon or results from: (a) the combination or use of the Software with any third party products or services if such combination is the cause of the infringement; (b) any modification to the Software 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) Customer's continued use of the alleged infringing Software after being notified thereof; (e) use or retention of a copy of the Software not in its most current version provided by Aqua; and/or (f) Aqua's compliance with any Customer instructions or requirements.
- 13.2. Remediation. Should the Software (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 Software (or part thereof); or (b) replace or modify the Software (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 unutilized) License Fees based on the remaining License Term.
- 13.3. 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 (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 13 (*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 an Aqua Claim to the extent that it impacts any Aqua Intellectual Property Right or goodwill; 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. Notwithstanding the preceding, Aqua shall not interfere with the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
- 13.4. Entire Liability. This Section 13 (*Indemnification*) states Aqua's sole and exclusive obligation and liability, and Customer's sole remedy, with respect to any Infringement Claim.

14. Term and Termination

- 14.1. Term. This Agreement commences as of the Effective Date and will continue in full force and effect for the duration of the License Term as specified in the applicable Purchase Order, unless earlier terminated in accordance with this Agreement.
- 14.2. Termination. Each Party may terminate this Agreement 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



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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. Notwithstanding the preceding, termination of this Agreement shall be in accordance with GSAR 552.212-4(l) Termination for the Government's Convenience, GSAR 552.212-4(m) Termination for Cause, and GSAR 552.212-4(w)(1)(iv) Continued Performance.

- 14.3. 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 Software from the Customer's systems; (b) Customer will pay all outstanding fees, including any License Fees; and (c) Customer shall, at Aqua's election, erase or return to Aqua all Aqua Confidential Information in its possession or under its control. Sections 1 (Definitions), 3.1 (Prohibited Acts), 6 (Payments), 7 (Third Party Software) and 9 (*Confidentiality*) through 15 (*Miscellaneous*) will survive the expiration or termination of this Agreement.

15. Miscellaneous

- 15.1. Entire Agreement. This Agreement and the attached Support TCs represent 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. This Agreement may only be amended by a written instrument duly signed by GSA and the applicable MAS Contractor. The Section and subsection headings used in this Agreement are for convenience only.
- 15.2. No Third-Party Beneficiaries. Unless otherwise expressly provided herein, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Customer and Aqua or the Aqua Affiliates and successors or assignees any rights, remedies or other benefits under or by reason of the Agreement.
- 15.3. 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 15.3 (*Assignment*), this Agreement will bind and benefit each Party and its respective successors and assigns. Notwithstanding the preceding, Assignment shall be governed by GSAR 552.212-4(b) and (w)(1)(xi).
- 15.4. Governing Law; Jurisdiction. This Agreement is governed by Federal law.
- 15.5. Feedback. If Customer provides Aqua with any feedback, ideas or suggestions regarding the Software ("Feedback"), Aqua may, at no cost, freely use such Feedback for any purpose whatsoever. For the avoidance of doubt, Feedback will not be deemed Customer's Confidential Information.
- 15.6. 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.
- 15.7. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect.



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- 15.8. Notices. Except as stated otherwise in this Agreement, any notice or other communication under this Agreement (each a "**Notice**"), will be addressed and delivered to the other Party by at least one of the following methods: (a) by hand delivery, (b) by nationally recognized courier service; or (c) by prepaid certified mail, to the attention of the person listed below at the addresses set forth below. Each Notice will be deemed effective on the following date: (A) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section; and (B) if given by certified mail, on the date evidenced by a signed return receipt. Notwithstanding anything contained herein to the contrary, a copy of any Notice transmitted will also be sent via electronic mail (email) to the address(es) listed below:

To Aqua:

Aqua Security Software, Inc.
201 Spear Street STE 1100,
San Francisco, CA 94105,
USA

Attn: Dror Davidoff
Title: CEO
Email: davidoff@aquasec.com

To Customer: See Purchase Order or similar document

- 15.9. Force Majeure. Excusable delays shall be governed by GSAR 552.212-4(f).
- 15.10. 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 Software.
- 15.11. Remedies. Except as expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or will be deemed, exclusive of any other right or remedy under this Agreement, at law, or in equity, but will be cumulative of such other rights and remedies.
- 15.12. Waiver. No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. 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.
- 15.13. U.S. Government Rights. As defined in 48 C.F.R. §2.101, all Software and Documentation provided in connection with this Agreement are "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with FAR 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.



Exhibit A

Customer Support Services Terms and Conditions

1. Support Terms

These Global Customer Support Services Terms and Conditions ("Support Agreement") set forth the terms and conditions under which Aqua Security ("Company") with whom you ("Licensee", and together with Company, a "Party" and the "Parties") have entered into a commercial Agreement and related Purchase Order for Company's products and services ("Products and Services"), as defined in the Agreement (the "Agreement" and "Solution" respectively), will provide technical support and maintenance services to Licensee for the Products and Services.

The Support Services are provided to the Licensee during the license term described in the Agreement ("License Term") and are subject to Licensee's payment of the applicable license Fees payable thereunder. Licensee acknowledges that the Support Services may be provided by company and/or a Company Affiliate. A "Company Affiliate" means, with respect to Company, any person, organization or entity controlling, controlled by, or under common control with, Company, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, organization or entity, whether through the ownership of voting securities or by contract or otherwise. Company reserves the right to revise this Support Agreement at any time by posting the revised version on the customer support portal in use at that time, provided however this will not materially decrease the level of Support Services as herein. The revised version will be effective ten (10) days after such posting, in accordance with General Services Administration Acquisition Regulation 552.212-4(w)(1)(vi) Updating Terms.

2. Solution Updates

Company may, from time to time, during the License Term, release program updates (i.e., releases, enhancements and bug fixes) to the Products and Services ("Updates"). Company will make such Updates available to Licensee to the extent generally made available by Company to its supported customers under valid support contracts, and at no additional cost.

3. Solution Support

During the License Term, Licensee is entitled to use the Company Support Portal and Web Site. Company will receive Licensee's requests for support through the channels and during the hours described below in section "Support Channels" and "Business Hours". Once Company has determined that the support request is covered by a valid Agreement, Company will respond to such support requests based in the manner described in section "Support Response Times and Severity Levels", when a support request is made to obtain assistance with Errors in the Solution. Licensee may have up to four (4) support contacts for purposes of receiving Support. A support contact for this purpose is a single individual, named in advance, who is authorized to contact Company Technical Support to make use of the Solution's Support Services.

As used herein:

"**System**" means a Licensee production-environment system that directly impacts Licensee's business operations.



“**Support and Maintenance Services**” refers to Company's responsibilities to address errors related to any of the Company’s Products and Services, which are verifiable and reproducible failure of the Services, to substantially conform to its published specifications (“**Error**”). Notwithstanding the foregoing, “**Error**” shall not include any failure caused by any of the Exclusions specified in Section 8 herein.

This Support Agreement is Licensee’s sole and exclusive remedy for any Errors specified herein.

4. Support Tickets

A “**Ticket**” is defined as a request for support entered via the Aqua Support Portal (defined below), associated with the Licensee accounts, and given a unique identifier. All times associated with a Ticket shall be governed by timestamps of activity in the Aqua Support Portal.

5. Support Channels

Licensee may initiate a Ticket using any of the following channels:

- a. Logging in and creating a Ticket on Aqua Support Portal (currently, <https://support.aquasec.com>) (“**Aqua Support Portal**”)
- b. Sending an email to a designated email address, which results in Ticket created in the Aqua Support Portal. (Currently support@aquasec.com)
- c. Phone support is available for SEVERITY 1 incidents based on the Licensee’s support contract with Company as described in the section Support Response Times and Severity Levels.

US Toll Free: +1 844-278-2403

International - UK: +44 20 3872 2782

International - All Other: +1 844-278-2403

Australia Toll Free: +61 1800 560 849

6. Business Hours

Business Hours are the hours in which business is normally conducted excluding public holidays. Company will monitor newly created Tickets during Business Hours, as follows: (i) for Severity Level 1 Business Hours are provided on a 24/7 basis for Premium Support (as described in Support Response Times and Severity Levels), otherwise (ii) Business Hours are as follows:

- | | |
|-------------------------------------|--|
| North America: | Mon–Fri, 9 a.m. to 5 p.m. (Local Time Zone). |
| APAC: | Mon-Fri, 9 a.m. to 5 p.m. (Local Time Zone). |
| EMEA (Europe, Middle East, Africa): | Mon–Fri, 9 a.m. to 5 p.m. (GMT/GMT+1). |

The preceding Business Hours are subject to the Exclusions specified below and to scheduled maintenance.



7. Support Response Times and Severity Levels

When initiating a Ticket, Licensee must provide a severity level corresponding to the business impact of the reported condition. Company will respond to the Ticket with an acknowledgment of the request on the Aqua Support Portal, including an initial assessment, or request for more information. Response times will be as follows, from the time of Ticket creation (unless they fall outside the Business Hours, which will result in a response on the next available day):

| Level | Severity Level Definition | Premium Support Response Time | Standard Support Response Time |
|-------|--|-------------------------------|--------------------------------|
| 1 | “System Down” or a Solution-inoperative condition impacting Licensee's production environment for which no workaround is immediately available, and where: (i) mission critical Systems are down; (ii) a substantial portion of mission-critical Systems data is at a significant risk of loss or corruption; (iii) a substantial loss of service to mission-critical Systems; (iv) Licensee's business operations have been severely disrupted; or (v) the Solution causes catastrophic network or Systems failure or that compromises overall Systems integrity or data integrity and significantly disrupts Licensee's business operations. | 1 hour - 24x7 coverage | 2 Business Hours |
| 2 | High-impact condition possibly endangering a System. The Solution may operate but is severely restricted. | 2 Business Hours | 4 Business Hours |
| 3 | Low-impact business condition with a majority of Solution functions still usable; however, some circumvention may be required to provide service. | 4 Business Hours | 8 Business Hours |
| 4 | With no impact on business conditions, (i) a minor problem or question that does not affect the Solution function, (ii) an error in Solution's Documentation that has no significant effect on operations; or (iii) a suggestion for new Solution features or enhancements. | 8 Business Hours | 16 Business Hours |

Exclusions

8. Exclusions

Solution Support described above will be provided only with respect to supported versions, at the time of Ticket creation, and shall exclude Errors resulting from any of the following:

- a. Modifications of the Solution that have not been approved by Company in writing.
- b. Licensee's failure to implement in a timely manner any Updates made available by Company.



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- c. Licensee's environment, installation or setup steps not validated or documented by Company; or failure to meet documented minimal supported hardware and software requirements.
- d. Use of the Solution other than as permitted in the License Agreement, or in violation of any laws.
- e. Any fault in any third-party hardware, software, firmware, or other product or service used in conjunction with the Solution, or any other causes beyond the reasonable control of Company.
- f. Licensee's negligence or willful misconduct.

9. Licensee Responsibilities

The obligations of Company under the above terms are subject to the following:

- a. Licensee will promptly report to Company any Error with the Solution, when it is discovered, along with the correct severity level.
- b. Licensee agrees to receive communications from Company in the manner prescribed herein.
- c. Licensee agrees that a person familiar with the Error will be available to work with Company at any time after a Ticket is created.
- d. Licensee agrees and hereby consents to (i) Company accessing Licensee's System, to the extent necessary, solely for the purpose of resolving any Error under this Support Agreement, and (ii) provide to Aqua, any technical information, documentation, setup and environment information, solution logs, details of custom components of application, any output or error message, and any other information that Company may reasonably request; all in order to reproduce operating conditions similar to those present when the Error occurred and take the appropriate actions to resolve it.
- e. Licensee agrees to implement any recommendation or Update in a timely manner, and to report when the Ticket can be closed.
- f. Licensee agrees to provide dedicated resources for Severity 1 tickets to work with Company on an ongoing basis during as necessary for Company to meet the required response times.

Aqua Security offers Cloud Native Security Platform, including its various modules, delivered either as Software as a Service (SaaS) or as Self-hosted by the Customer.

To the extent your purchase includes SaaS module, the following Service Level Agreement shall apply.

Service Level Agreement

1. Definitions

“**Service Hours**” or “**Uptime**” refers to any time outside Scheduled Maintenance and excludes any Downtime Exclusions as specified below.

“**Maintenance**” refers to Licensee rights to receive bug fixes and version upgrades for the product purchased, which may include either one of the following at Company's discretion: temporary workaround; code or patch release that will be delivered according to a time schedule determined by Company; or Software enhancement or new feature that will be delivered according to a time schedule determined by Company.



“Scheduled Maintenance Interruption” refers to any planned down time, interruption or degradation of the Licensed Services or Licensed Products or the operation of the System (defined below) which is required, in Company’s opinion, for the correction or update of any part of the Licensed Services or Licensed Products and for any reason.

“Emergency Maintenance Interruption” refers to any unexpected down time, interruption or degradation of the Licensed Services or Licensed Products or the operation of the System which is required for the correction of any part of the Licensed Services or Licensed Products for any reason

“Scheduled Maintenance” refers to collectively the Scheduled Maintenance Interruption and Emergency Maintenance Interruption and shall be calculated together and in the aggregate for the purpose of determining Availability.

All other terms not defined herein shall have the meaning ascribed to them in the Software as a Service Agreement or the Support Terms and Conditions.

2. Availability

- 2.1. Company will use commercially reasonable efforts to ensure effective and efficient achievement of availability of the Licensed Service during Service Hours of 99.9%.

Availability will be calculated and reported on a monthly basis and will be calculated as follows:

$$\% \text{ Availability} = \frac{(\text{Service Hours} - \text{Scheduled Maintenance}) - \text{Service Downtime}}{(\text{Service Hours} - \text{Scheduled Maintenance})} \times 100$$

- 2.2. A Maintenance schedule has been drawn up for scheduled Maintenance. A notice for Schedule Maintenance Interruption shall be provided at least 48 hours prior to the Scheduled maintenance occurrence; A notice for Emergency Maintenance Interruption shall be provided as soon as practically possible following the event which requires such interruption.
- 2.3. Company will attempt to maximise actual availability even during the period for scheduled Maintenance. In no event shall planned downtime during Scheduled Maintenance, be it for a major release or others, exceed six (6) hours per month.
- 2.4. Downtime exclusions include: (i) force majeure events; (ii) Scheduled Maintenance; (iii) Licensee’s Internet service failures; (iv) any failure of Licensee’s own hardware, software, or network connection; (v) Licensee’s bandwidth restrictions; (vi) Licensee’s acts or omissions; and/or (vii) Anything outside of the direct control of Company (including downtime resulting directly or indirectly from any failures of Company’s third-party hosting providers).
- 2.5. If Company fails to meet its guaranteed Availability of 99.9% in any month, Licensee will be credited by an extension to the License Term under the applicable Purchase Order, according to the following calculation, as sole and exclusive remedy to the Licensee:

| % Availability (reported monthly) | Services Credit (on a monthly basis) |
|--|--------------------------------------|
| Uptime of 99.8% to 99.9% (i.e., up to approx. 1 hour downtime/mo.) | No credit |



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| % Availability (reported monthly) | Services Credit (on a monthly basis) |
|--|--------------------------------------|
| Uptime of 99.5% to 99.8% (i.e., up to approx. 4 hours downtime/mo.) | 5% |
| Uptime of 98% to 99.5% (i.e., up to approx. 14 hours downtime/mo.) | 10% |
| Uptime of 95% to 98% (i.e., up to approx. 36 hours downtime/mo.) | 25% |

For clarity purposes, the Services Credits will be calculated on a monthly basis, as a percentage of the monthly license Fees (not including support or other additional fees) as per the table above and will be added as an extension to the License Term (instead of a financial refund).

By way of example - if the credit due is 5% than Licensee would be entitled to 1.5 days extension to the License Term (30 days X 24 hours = 720 X 5% = 36 hours = 1.5 day).