

# Terms of Service

Last Modified: July 25, 2020

PLEASE READ ALL OF THE FOLLOWING TERMS AND SERVICES (“TOS”) CAREFULLY BEFORE ACCESSING AND USING THE SERVICES. THIS TOS IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND AQFER, INC. (“WE”). THESE TOS GOVERN THE USE OF THE SERVICES BY THE PARTY (“YOU”) WHO HAS ENTERED INTO AN ORDER FORM WITH US WHICH REFERENCES THESE TERMS OF SERVICES. BY ACCESSING AND USING THE SERVICES YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THIS TOS AND AGREE TO ABIDE BY ALL OF THE TERMS AND CONDITIONS STATED OR REFERENCED HEREIN. IF YOU DO NOT AGREE TO ABIDE BY TOS, DO NOT ACCESS OR USE THE SERVICES. SECTION 13 SHALL INCLUDE A LIST OF DEFINED TERMS USED HEREIN.

## 1. SERVICES

1.1 Services. We shall provide you with certain Services as specified in an Order Form. All changes to an Order Form must be approved by both parties in writing.

1.2 Grant of License. Unless otherwise specified in the applicable Order Form, the Services are purchased on a subscription basis. Subject to the terms and conditions of this TOS, we grant you a non-exclusive, non-sub-licensable, non-transferable right to access and use the Services and display the Aqfer Technology during the applicable Service Term solely for your internal business purposes and subject to the limitation(s) (if any) set forth in the Order Form. You may allow your employees, agents, consultants and independent contractors to access the Service solely in performing services on your behalf and in accordance with the provisions of this TOS, provided that such third parties will be bound by the applicable provisions of this TOS and you shall be responsible for ensuring that any such third parties comply with the terms and conditions of this TOS and you shall be liable for any breach of this TOS by such third parties. No implied licenses are granted hereunder; we reserve all rights not expressly granted hereunder.

1.3 Individual Features and Services. We agree to make certain Services available to you as specifically set forth in the Order Form. Our Services may be varied, updated, replaced, removed, supplemented or added to over time by us at any time in our sole discretion. We will notify you of a change to the Services in advance only if the change does not preserve, extend, or enhance the features or functionality of the Services. If we notify you of a change as required in this Section and you do not wish to use the Services after notification of the change, you may within thirty (30) days of notification provide us with written notice of termination of the Services. If you provide no written notice to us within the thirty (30) day period, you will be deemed to have accepted the change, and the Services will continue in full force and effect. Upon termination, your sole and exclusive remedy and our sole and exclusive liability is a refund of any prepaid and unused fees from the effective Services termination date. Nothing in this Section requires us to continue to provide any portion of the Services if it would result in a violation of the rights of any third party or any applicable law.

1.4 Technical Support. We will provide technical support for the Services as specified in Aqfer’s then-current support policy, a copy of which is located on Aqfer’s web site (posted at <https://aqfer.com/about/support-policy>) hereto as long as you are entitled to receive

technical support as specified under the applicable Order Form. You agree to cooperate with us in our efforts to provide technical support. The manner and methods we use to perform technical support are subject to our sole discretion.

1.5 Service Level. We will provide the Services in accordance with the service levels specified in Aqfer's then-current service level policy, a copy of which is located on Aqfer's web site (posted at <https://aqfer.com/about/service-level-policy>).

1.6 Ownership. We are and will remain the sole and exclusive owner of all proprietary rights, including all Intellectual Property Rights, in and to (a) the Services and Aqfer Technology, including any modifications or improvements thereto; and (b) any inventions, works of authorship or information that is authored, conceived, reduced to practice, invented or otherwise developed in the course of our performing any services hereunder. You acknowledge that our name, our logo, and the product names associated with the Service are our trademarks (or those of our suppliers or licensors), and no license to such marks is granted herein. No ownership of any of the foregoing or any Intellectual Property Rights therein is transferred or granted to you except for the limited access rights expressly granted herein.

## **2. CUSTOMER ACCOUNTS**

2.1 Use Restrictions. When using the Services and Aqfer Technology, you may not, and you will ensure that Users do not: (a) decompile, decipher, disassemble, translate, modify, prepare derivative works of, reverse engineer or otherwise attempt to access the source code of the Services, or Aqfer Technology, except as permitted by applicable law; (b) upload any Customer Data or any content, data or information that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy or right of publicity, hateful, or racially, ethnically or otherwise objectionable; (c) infringe the Intellectual Property Rights of any third party (including by uploading Customer Data to the Service); (d) interfere with or disrupt the Aqfer Technology, the systems we use to host the Service, or other equipment or networks connected to the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Services made known to you; (e) use the Services, or Aqfer Technology in the operation of a service bureau or time-sharing service; (f) circumvent the user authentication or security of the Services or Aqfer Technology or any host, network, or account related thereto, attempt to gain unauthorized access to a network, computer, software application, or any part thereof, misrepresent the source, identity, or content of information transmitted via the Services; (g) make any use of the Services or Aqfer Technology that violates any applicable local, state, national, international or foreign law; or (h) allow any third party to use any user identification(s), code(s), password(s), procedure(s) and user keys issued to, or selected by, you for access to the Services or Aqfer Technology. In addition, you may not remove, obscure, or alter our copyright notices, trademarks, or other proprietary rights notices on any Services or Aqfer Technology.

2.2 Accounts. You must create an account to access and use the Services. You agree to provide accurate and complete information when signing up for an account. You are solely responsible for all activities that take place on or through your account, including the acts and omissions of your Users. You will, and you will require Users to, take appropriate security precautions including ensuring appropriately complex passwords, keeping passwords confidential, and regularly changing passwords. You will, and you will require Users to, comply with our security guidelines and procedures made known to you through the Services or otherwise. If you learn of a third party having obtained knowledge of a password without authorization, you will inform us of such unauthorized access without

undue delay and promptly change the password. Rights of any User to utilize any Service cannot be shared or used by more than one individual. In addition, a User's access information and privileges may not be transferred from one individual to another unless the original User no longer requires and is no longer permitted access to the applicable Service, as a result of which that individual is no longer a User. We are not responsible for any unauthorized access to your account, including any unauthorized use of the Services, and you agree to notify us promptly of any unauthorized use of your account.

**2.3 Right to Monitor and Enforce.** We may, but has no obligation to, monitor any content or traffic on the Services, including your Customer Data, for the purposes of ensuring that the Services are being used in accordance with this TOS. We may, without notice to you: intercept, block, or remove any content or traffic that we believe violates this TOS, or applicable laws; and report to the appropriate authorities any conduct by you that we believe violates applicable laws, which may include disclosure of your relevant Customer Data, personal data, or usage history on the Service.<sup>3</sup> Upon prior written notice to Provider and with Provider's prior written consent (which will not be unreasonably withheld or applied discriminatorily), you may upload Customer Data or any content that contains social security numbers or other state ID numbers, bank account information, credit or debit card information, personal information collected from children under 13, or health or medical information

**2.4 Account Suspension.** We may suspend your account and access to the Services without liability if: (i) we reasonably believe that your Services are being accessed or used by third parties without your authorization; (ii) we are required to do so by law; or (iii) we have reason to believe that the Services have, are being, or will be used in violation of this TOS. If your account remains suspended for a period of thirty (30) days or more, we may terminate your account without notice to you as set forth in Section 6 ("Term and Termination"). If your account is suspended for any reason, you remain responsible for all fees accrued through the date of suspension.

### **3. CUSTOMER DATA: RIGHTS AND RESPONSIBILITIES**

**3.1 Customer Data License.** You hereby grant and license us the right to store, display and transmit the Customer Data solely as necessary in order to provide you the Services. You acknowledge and agree that we may collect, analyze and use anonymized or aggregated Customer Data, or data derived from Customer Data, as well as data about your access and use of our Services, solely for the purpose of providing, operating, analyzing, and improving our Services. For the sole purpose of providing and improving our Service, we may collect and use data relating to the usage of the Service, including without limitation monitoring and analyzing usage and traffic patterns of our websites and Services. You retain ownership and control of your Customer Data.

**3.2 Your Responsibilities.** You represent, warrant and agree that:

- a) you have obtained the Customer Data lawfully, and the Customer Data does not and will not violate any applicable laws or a third party's proprietary or intellectual property rights;
- b) the Customer Data is free of all viruses, Trojan horses, and other elements which could interrupt or harm the systems or software used by us or our subcontractors to provide the Services; and
- c) all Customer Data has and will be collected by you in accordance with a privacy policy that permits you to share, collect, use and disclose such Customer Data as contemplated under this TOS, and if required by applicable law, pursuant to consents obtained by you to do each of the foregoing.

We take no responsibility and assume no liability for any Customer Data, and you will be solely responsible for your Customer Data and the consequences of sharing it with us.

3.3 Notice of Security Incident. In the event that Customer Data is disclosed to or accessed by an unauthorized party, we will promptly notify you and will investigate the incident; and if such incident triggers any third party notice requirements under applicable laws, you agree that as the owner of the Customer Data, you will cooperate in the timing, content and method of any such notice and compliance with such laws.

3.4 Backup of Customer Data. We will not be responsible for any backup, recovery or other steps required to ensure that Customer Data is recoverable in the case of data loss. You are solely responsible for backing up your Customer Data on a regular basis and taking appropriate steps to safeguard and ensure the integrity of your Customer Data. The Service allows you to export and back-up Customer Data at your discretion, and we encourage you to do so regularly. We will assist with one extraction of Customer Data free of charge and you will be charged for any other data extraction at our prevailing professional services rates.

3.5 Our DMCA Policy. It is our policy to respond to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act, and to terminate the accounts of any user that we determine to be a repeat infringer. You agree to cooperate with us and with any third party that alleges that your Customer Data violates a third party's intellectual property rights.

3.6 Our Privacy Policy With Respect to Your Personal Information. By accessing or using the Services, you agree to comply with our Privacy Policy (posted at <https://aqfer.com/about/privacy-policy>) regarding the collection, use, and disclosure of certain personally identifiable information, such as your name and address, in accordance with the Privacy Policy, including having this information collected, used, transferred to and processed in the United States.

## **4. FEES**

4.1 Fees and Payment Terms. Unless otherwise set forth in an Order Form, we may invoice you the fees for Services as described in the Order Form, and you will pay such fees within thirty (30) days following invoice date, unless otherwise set forth in the Order Form. Unless otherwise stated, all fees must be paid in U.S. Dollars. To the extent that any fees are based on your use of the Services, such fees will be determined solely based on our calculations of your Services usage. Any refunds provided by us in our sole and absolute discretion will be applied as a credit only; you will not have any right to withhold or reduce fees under this TOS or set off any amount against fees owed. You are responsible for all charges incurred under your account, including any fees incurred by anyone with access to your account. Late payments will bear interest at a rate of 1.5% per month, or the highest amount permitted by law, whichever is less, and we may suspend your account if you fail to make a payment when due.

4.2 Taxes. You are responsible for paying any governmental taxes imposed on your use of the Services, including, but not limited to, sales, use, or value-added taxes. To the extent we are obligated to collect such taxes, the applicable tax will be added to your billing account.

## **5. SECURITY**

5.1 Your Precautions. You will take reasonable security precautions including ensuring appropriately complex passwords, keeping your passwords confidential and regularly

changing your passwords. You will be solely responsible for all activity which takes place on or through your account.

5.2 Our Safeguards. We represent and warrant that we have implemented industry standard practices and legally compliant technical, administrative, and organizational measures designed to mitigate against accidental loss and from unauthorized access, use, alteration or disclosure of Customer Data. For the avoidance of doubt, we do not warrant that your use of the Services is risk-free. In addition, we will maintain a data security program for the Service that will: (a) include reasonable administrative, physical, technical, organizational and other security measures to protect against unauthorized access to, or destruction, loss, unavailability or alteration of, appropriate controls pursuant to our Service Organization Control ("SOC") 2 audit (or other similar security audit used by us at such time). We will be responsible for unauthorized access and damage to, and for unauthorized deletion, destruction and loss of, Customer Data solely to the extent arising from our breach of its obligations under this TOS.

5.3 Business Continuity and Disaster Recovery. We will implement and maintain throughout the term of this TOS reasonable business continuity and disaster recovery plans to help ensure availability of the Customer Data following any significant interruption or failure of critical business processes or systems affecting the Service. We will provide copies of such plans to Customer annually upon request

## **6. TERM AND TERMINATION**

6.1 Term. This TOS will commence on the day it is accepted by you, and will continue for so long as there is an Order Form in effect or as otherwise terminated in accordance with the terms of this TOS.

6.2 Termination.

a) By Either Party. Either party may terminate this TOS if the other party breaches any of the provisions of this TOS, and does not cure such breach within thirty (30) days of receiving written notice of such breach.

b) Effect of Termination. If the Services are terminated for any reason, your access to the Service will terminate, and you will stop using the Services immediately, (ii) all contracted fees as set forth on an Order Form will be due and payable, (iii) provided that we have not terminated this Agreement pursuant to Section 6.2(a), we will allow you to export your Customer Data from the Services for a period of thirty (30) days (alternatively, we may provide the Customer Data to you in an industry-standard format) subject to your execution of a separate written agreement to (a) help ensure the security and integrity of such data is maintained, and (b) give us reasonable protection against liability relating to extraction, transfer and potential misuse of such Customer Data; and (iv) each party will destroy or return the other party's Confidential Information. Regardless of the basis for expiration or termination of the Services, we will not be obligated to retain any Customer Data for longer than thirty (30) days after any such expiration or termination, unless otherwise agreed in advance by the parties in writing. Notwithstanding any termination hereof, the provisions of Sections 1.6 ("Ownership"), 2.1 ("Use Restrictions"), 3 ("Customer Data; Rights and Responsibilities"), 4 ("Fees"), 5 ("Security"), 6.2(b) ("Effect of Termination"), 7 ("Confidentiality"), 8 ("Disclaimers; No Warranties"), 9 ("Limitations on Liability"), 11 ("Indemnification"), and 12 ("Miscellaneous"), will survive any expiration or early termination of this TOS for any reason.

## **7. CONFIDENTIALITY**

7.1 Confidential Information. Each party acknowledges that it will receive Confidential Information of the other party pursuant to this TOS and agrees that it shall exercise at least that level of care that it takes with its own Confidential Information of a similar nature to, but in no case less than reasonable care. The party receiving confidential information (the "Receiving Party") shall not make any use of Confidential Information of the party disclosing the Confidential Information (the "Disclosing Party") except as permitted in this TOS and as necessary to exercise its rights or obligations hereunder. The Receiving Party shall not disclose the Confidential Information to any third parties except to its affiliates, directors, officers, employees, attorneys, auditors, insurers and agents ("Representatives") with a need to know. Each Representative shall have agreed in writing to comply with the confidentiality obligations hereunder or substantially similar thereto before any disclosure. In addition, a Party may disclose Confidential Information if: (a) the disclosure is required by the rules of a stock exchange; or (b) in the written opinion of counsel, such disclosure is required by an applicable law, rule, regulation or order of a duly empowered government agency or a court of competent jurisdiction, provided that such disclosure may only be made after notice and a reasonable opportunity to intervene is given to the Disclosing Party. The Receiving Party shall notify the Disclosing Party upon learning that Confidential Information of the Disclosing Party has been disclosed in violation of this TOS. If a subpoena or other legal process in any way concerning Confidential Information disclosed in connection with this TOS is served upon the Receiving Party, such Party shall immediately notify the Disclosing Party and shall cooperate at the Disclosing Party's expense in any reasonable and lawful effort to defend and/or contest the validity of such subpoena or other legal process. The terms of this TOS shall be Confidential Information and neither party shall disclose to any third party without prior written consent, the terms of this TOS, except as required by law or governmental regulations, as may be necessary to establish rights hereunder, or to a lending institution of a party, prospective investors, or to a prospective purchaser of all or substantially all of the assets of a party, and in each case under a similar obligations of confidentiality.

7.2 Equitable Remedies. It is expressly agreed that a material breach of this Section by a party may cause irreparable harm to the other party and therefore in addition to any and all remedies available at law, the non-breaching party will be entitled to an injunction or other equitable remedies.

7.3 Exceptions. The foregoing shall not apply if such information: (a) is made available to the public without restrictions through no act or fault of the Receiving Party, (b) subsequently is rightfully received by a Party from a third party without restriction and not in breach of any duty of confidentiality or non-use, (c) is independently developed by a party without reference to the Confidential Information, or (d) is or shall be rightfully in the possession of a Party prior to receipt free of restriction.

## **8. DISCLAIMERS; NO WARRANTIES**

8.1 Warranties. Vendor warrants that (i) the Service will be performed and operate in all material respects with the specifications provided in the TOS, the applicable Order Form and the Documentation and (ii) it will comply with all applicable laws, rules, regulations, and regulations.

8.2 No Other Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES AND AQFER TECHNOLOGY, ARE PROVIDED TO YOU ON AN "AS IS" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE AND OUR SUPPLIERS, LICENSORS, AND PARTNERS DISCLAIM ALL WARRANTIES,

STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON- INFRINGEMENT.

8.3 No Responsibility for Electronic Communications. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, PERSONAL COMPUTERS, AND ELECTRONIC COMMUNICATIONS. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, YOU UNDERSTAND THAT THE TECHNICAL PROCESSING AND TRANSMISSION OF ELECTRONIC COMMUNICATIONS IS ESSENTIAL TO YOUR USE OF THE SERVICE.

## **9. LIMITATIONS ON LIABILITY**

9.1 Indirect Liability Disclaimer. Subject to Section 9.3 ("Exclusions"), under no circumstances, including, but not limited to negligence, will either you or we (or our affiliates, contractors, employees, agents, or third-party partners, licensors, or suppliers) be liable for any special, indirect, incidental, consequential, punitive, reliance, or exemplary damages (including without limitation losses or liability resulting from loss of data, loss of revenue, anticipated profits, or loss of business opportunity) that result hereunder, including from your use or your inability to use the Services or Aqfer Technology or any other products or services provided in connection with this TOS, even if you or we (or an authorized representative of ours) has been advised of the possibility of such damages.

9.2 Limitation on Damages. Subject to Section 9.3 ("Exclusions"), in no event will our (or our third-party partners', licensors', or suppliers') total cumulative liability under this TOS for all damages, losses, and causes of action arising out of or relating to this agreement or your use of the Services or any other products or services provided in connection with an Order Form (whether in contract, tort including negligence, warranty, or otherwise), exceed the amount paid or payable by you, if any, for accessing the Services that gave rise to your claim during the twelve (12) months immediately preceding the day the act or omission occurred that gave rise to your claim.

9.3 Exclusions. The exclusions and limitations set forth in Sections 9.1 and 9.2 above do not apply to a breach of Sections 2.1 (Use Restrictions), 7 (Confidentiality), or to either party's indemnification obligations hereunder. In addition, the limitations set forth in Section 9.2 will also not apply to direct damages to the extent arising out of a party's gross negligence, intentional misconduct or fraud.

## **10. SERVICES LOCATION; EXPORT RESTRICTIONS.**

The Services are controlled and operated from our facilities in the United States. We make no representations that the Services are appropriate or available for use in other locations. Those who access or use the Services from other jurisdictions do so at their own volition and are entirely responsible for compliance with local law, including but not limited to export and import regulations. You may not use the Services if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. By using the Services, on behalf of yourself and all Users, you are consenting to have Customer Data transferred to and processed in the United States.

## **11. INDEMNIFICATION**

11.1 By Us. We will defend you against any claims brought against you by any third party to alleging that your use of the Services (in accordance with this TOS constitutes an infringement or misappropriation of any issued patent or copyright and we will pay damages

finally awarded against you (or the amount of any monetary settlement entered into regarding such claim) with respect to those claims.

11.2 By You. You agree to indemnify, defend and hold harmless us and our affiliates, contractors, employees, agents, and third-party partners, licensors and suppliers from and against all claims, liabilities, causes of action, damages and costs (including settlement costs and reasonable attorneys' fees) arising out of third party claims, suits, actions or proceedings relating to the Customer Data.

11.3 Procedure. The party seeking indemnification under this Section 11 shall give the other party (the "Indemnitor"): (a) prompt written notice of any such claim or threatened claim; (b) sole control of the defense, negotiations and settlement of such claim; and (c) full cooperation in any defense or settlement of the claim (at the Indemnitor's cost).

## **12. MISCELLANEOUS**

12.1 Notices. Either party may provide the other with notices required hereunder by confirmed email, first class mail, or personal delivery at the other party's primary place of business. Notice will be deemed given twenty-four (24) hours after email is sent or three (3) business days after the date of postal mailing.

12.2 Waiver. The failure of either party to exercise or enforce any right or provision of this TOS will not constitute a waiver of such right or provision. Any waiver of any provision of this TOS will be effective only if in writing and signed by the waiving party.

12.3 Severability; Interpretation. If any provision of this TOS is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions. Without limiting the generality of the foregoing, the limitation of liability provisions will remain in effect notwithstanding any unenforceability of any warranty or warranty disclaimer provision. All captions are intended solely for your and our respective convenience, and none will affect the meaning of any provision. All references to "written," "in writing," or other words of similar import refer to a non-electronic, paper document only, except where electronic mail communication is expressly authorized.

12.4 Assignment. This TOS and any Order Form, and any rights and licenses granted hereunder, may not be transferred or assigned by either party without our prior written consent (which may be withheld in our sole discretion), provided that no consent shall be required for an assignment of this TOS and any Order Form by either party pursuant to a change of control, a merger or sale of all or substantially all of a party's assets or all of a party's outstanding stock. Any permitted assignment of this TOS and any Order Form will be binding upon and enforceable by and against your and our respective successors and assigns, provided that any unauthorized attempted assignment will be null and void and constitute a breach of this TOS and any Order Form.

12.5 Governing Law. This TOS is governed by the laws of the State of California without reference to any conflict-of-laws principles that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the transactions contemplated by this TOS. The Uniform Computer Information Transactions Act ("UCITA") will not apply to this TOS regardless of when and howsoever adopted, enacted and further amended under the laws of the State of California or any other state. .

12.6 Force Majeure. Neither party will be liable for delays, failures, or inadequate performance that results from conditions outside of its reasonable control, including, without limitation, acts of God, natural disasters, pandemics, endemics, systemic electrical,



telecommunications, or other utility failures, earthquakes, threatened or actual acts of terrorism or war, riots, or governmental acts or orders.

**12.7 Independent Contractors; Third Party Beneficiaries.** You and we are independent contractors, and nothing herein will be construed as creating a partnership, agency, or joint venture, and neither you nor we will have the ability to bind the other. There are no third-party beneficiaries to this Agreement.

**12.8 Publicity.** You hereby grant to us the right to use your company's name, trademarks, and logos solely for purposes of identifying and promoting your company as a client of ours during the term of this TOS and thereafter. Further, we will have the right to issue a press release regarding the existence of the business relationship between you and us.

**12.9 Entire Agreement.** This TOS, together with all incorporated documents and any Order Forms (if applicable) and any additional agreements you may enter into with us in connection with the Services, constitutes the entire agreement between you and us relating to the subject matter herein, and it supersedes all prior or contemporaneous negotiations, discussions, or agreements, whether written or oral, between you and us regarding its subject matter. In the event of conflict or inconsistency between provisions of the components of this TOS, (a) this TOS will prevail over the terms of an Order Form unless the terms of the Order Form expressly state that they will prevail over the terms of an Order Form unless the Order Form terms expressly state that they override the default terms of this TOS; (b) an Order Form will prevail over any schedules, exhibits, and appendices to the Order Form; and (c) a more recent Order Form will prevail over an Order Form agreed to earlier covering the same or substantially similar Services. This TOS can only be modified in a writing signed by you and us, collectively. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) will be deemed original signatures. Any preprinted terms on a purchase order or similar document are deemed rejected.

### **13. DEFINITIONS**

"Aqfer Technology" means our proprietary software and other technology provided via the Services, including any and all enhancements, modifications, updates, upgrades, and derivative works to the foregoing.

"Confidential Information" means all confidential information disclosed by a party, a party's affiliates, business partners or its or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this TOS; (ii) can be shown by documentation to have been known to the receiving party at the time of its receipt from the disclosing party; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by the receiving party without reference to the disclosing party's Confidential Information.

"Customer Data" means any files, code, content, or other data you submit, upload, or transmit on or through the Services.

"Documentation" means the manuals and online help we provide for use in connection with the Service, posted at <http://documentation.Aqfer.com>. We may update the Documentation from time to time.

“General Support Incidents” are issues other than Urgent Support Incidents that would be assigned priority 2-5 under ISO 20000 standards.

“Intellectual Property Rights” means worldwide patents, copyrights, trademarks, service marks, trade names, domain name rights, know-how and other trade secret rights, and all other intellectual property rights and similar forms of protection.

“Order Form” means a document detailing the Services to be provided by us, the fees associated therewith, the Service Term, and any other transaction-specific terms and conditions. Any and all mutually executed Order Form(s) are deemed incorporated herein by this reference. Each Order Form is intended to define a separate contract particular to that order, incorporating by reference the terms and conditions of the applicable portions of this TOS. An Order Form may also contain other terms or conditions which apply specifically to that particular order/contract. You agree that each Order Form will be signed by a representative having the authority to bind you, and that we may presume that such representative has such authority. A binding order is created when we accept and countersign an Order Form signed by you.

“Services” means the specific services provided by us, as set forth on an Order Form.

“Service Term(s)” means the Order Form-specified period(s) during which Users may use the Service.

“Urgent Support Incidents” means issues that would be assigned Priority 1 under ISO 20000 standards, indicating the combination of high urgency and high impact.

Per ISO 20000 standards, high urgency incidents are issues where: i) the damage caused by the incident increases rapidly, ii) work that cannot be completed by staff is highly time sensitive, iii) a minor Incident can be prevented from becoming a major Incident by acting immediately or iv) several users with VIP status are affected.

Per ISO 20000 standards, high impact incidents are incidents where i) a large number of staff are affected and/or not able to do their job, ii) a large number of customers are affected and/or acutely disadvantaged in some way, iii) the financial impact of the Incident is significant, or the damage to the reputation of the business is likely to be high or iv) someone has been injured. “User” means your employees, representatives, consultants, contractors, or agents who are authorized by you to use the Services and have been supplied user identifications and passwords by you (or by us at your request).

“User” means your employees, representatives, consultants, contractors, or agents who are authorized by you to use the Services and have been supplied user identifications and passwords by you (or by us at your request).