

# **AQUAFORREST**

## **TERMS OF SERVICE**

Please read these Terms of Service carefully. All contracts that Aquaforest may enter into from time to time for the provision of the Cloud Services and related services shall be governed by these Terms of Service, and Aquaforest will ask for the Customer's express acceptance of these Terms of Service before providing the Services to the Customer.

In these Terms of Service, words and phrases with specific meanings have initial capital letters. See Clause 25 for the definitions of these words and phrases.

### **1. Term**

- 1.1 The Agreement shall come into force upon the Effective Date and shall continue in force indefinitely, subject to termination in accordance with its terms.
- 1.2 Unless the parties expressly agree otherwise in writing, each Order Form shall create a distinct contract under these Terms of Service.

### **2. Set Up Services**

- 2.1 Aquaforest shall provide the Set Up Services to the Customer upon or following the Effective Date with reasonable skill and care.
- 2.2 Aquaforest shall use reasonable endeavours to ensure that the Set Up Services are provided in accordance with any timetable set out in the Services Package Specification but does not guarantee this.
- 2.3 Any Intellectual Property Rights that may arise out of the performance of the Set Up Services by Aquaforest shall be the exclusive property of Aquaforest.

### **3. Cloud Services**

- 3.1 Aquaforest shall provide the Access Credentials to the Customer before or promptly following the completion of the Set Up Services.
- 3.2 Aquaforest hereby grants to the Customer a non-exclusive licence to use the Cloud Services by means of the Customer Application and the Access Credentials in the Environment for the business purposes of the Customer and in accordance with the Documentation, from the completion of the Set Up Services until the end of the Term, subject to these Terms of Service.
- 3.3 The Customer acknowledges that use of the Cloud Services is subject to the agreed limitations and Charges, depending upon the Customer's Package. If the Customer exhausts the available Subscription Units during an Agreement Period, then the Customer may purchase additional Subscription Units in accordance with Clause 8. If any Subscription Units are unused at the end of an Agreement Period, then those unused Subscription Units will cease to be available for use by the Customer.

- 3.4 In addition, the Customer acknowledges that use of the Cloud Services is subject to the resource limitations in the Services Package Specification, including limitations as to the size of files to be processed using the Cloud Services.
- 3.5 Except to the extent expressly permitted in these Terms of Service or required by law on a non-excludable basis, the licence granted by Aquaforest to the Customer under Clause 3.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Cloud Services;
  - (b) the Customer must not permit or enable any unauthorised person or application to access or use the Cloud Services; and
  - (c) the Customer must not conduct or request that any other person conduct any penetration testing on the Cloud Services without the prior written consent of Aquaforest.
- 3.6 The Customer shall keep the Access Credentials confidential and must not disclose them to any third party. The Customer shall use reasonable endeavours, including reasonable security measures relating to Access Credentials, to ensure that no unauthorised person may gain access to the Cloud Services using the Access Credentials.
- 3.7 Aquaforest shall use reasonable endeavours to ensure that the Cloud Services are available 24/7 from the completion of the Set Up Services until the end of the Term, but Aquaforest does not guarantee this. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not constitute a breach of the Agreement:
- (a) a Force Majeure Event;
  - (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of the Environment operator;
  - (d) a fault or failure of the Customer's computer systems or networks;
  - (e) any breach by the Customer of the Agreement; or
  - (f) scheduled maintenance carried out in accordance with the Agreement.
- 3.8 The Customer must not use the Cloud Services in any way that causes, or may cause, damage to the Cloud Services or impairment of the availability or accessibility of the Cloud Services.
- 3.9 The Customer must not use the Cloud Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or

- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

3.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Cloud Services, either during or after the Term.

#### **4. Support Services, scheduled maintenance and Updates**

4.1 Aquaforest shall provide the Support Services to the Customer during the Term with reasonable skill and care.

4.2 Aquaforest shall make available to the Customer a helpdesk, which may be accessed by email or (during Business Hours) telephone or Aquaforest's live chat system; and the helpdesk may be used by the Customer for the purposes of requesting and, where applicable, receiving the Support Services. The Customer must not use the helpdesk for any other purpose.

4.3 Aquaforest shall ensure that the helpdesk is staffed during Business Hours only.

4.4 Aquaforest will usually respond to requests for Support Services before the end of the Business Day following the day upon which the request was received; and Aquaforest shall use commercially reasonable endeavours to resolve issues raised through the Support Services promptly. Issues may be resolved through hotfixes, work-arounds and/or periodic Updates.

4.5 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

4.6 The Support Services are subject to:

- (a) any limitations specified in the Services Package Specification; and
- (b) a general fair use policy.

4.7 If:

- (a) the Customer exceeds any Package-specific limitations relating to the Support Services; or
- (b) Aquaforest determines that the Customer's use of the Support Services is excessive,

then Aquaforest may inform the Customer that all subsequent Support Services will be charged at Aquaforest's standard time-based charging rates (and Aquaforest may charge the Customer accordingly).

4.8 The Customer must ensure that all communications with Aquaforest relating to the Support Services are made via the technical support contact identified by the Customer to Aquaforest, or such replacement person as may be notified by the Customer to Aquaforest in writing. The Customer shall ensure that the technical support contact has adequate qualifications and experience to perform this role efficiently. Aquaforest may suspend the

Support Services if Aquaforest determines, acting reasonably, that the designated technical support contact does not meet this standard.

- 4.9 The Customer must abide by Aquaforest's policies regarding the provision of confidential information in connection with the Support Services and the removal of personal data from documents and files before they are submitted to Aquaforest in connection with the Support Services. Aquaforest may refuse to provide Support Services if the Customer does not abide by these policies.
- 4.10 Aquaforest shall have no obligation to provide Support Services in respect of any issue caused by the improper use of the Cloud Services by the Customer, including use contrary to the Documentation.
- 4.11 Aquaforest shall where practicable give to the Customer prior written notice of scheduled maintenance that is likely to affect the availability of the Cloud Services or is likely to have a material negative impact upon the Cloud Services.
- 4.12 The Customer acknowledges that the features and functionality of the Cloud Services will evolve over time as Updates are applied, and furthermore that features or functionality of the Cloud Services may be removed or deprecated. Aquaforest does not warrant or represent that any particular features or functionality will be maintained over the Term and, subject to Clause 13.1, Aquaforest will not be liable to the Customer for any loss or damage arising out of changes to the features or functionality of the Cloud Services.
- 4.13 Aquaforest shall give to the Customer prior written notice of the application of any major non-security Update to the Cloud Services. For the avoidance of doubt, Aquaforest has no obligation to notify the Customer of minor Updates or security-related Updates.

## **5. Customer obligations**

5.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to Aquaforest, or procure for Aquaforest, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) access to the Customer Application and data processed by the Customer Application,

as are reasonably necessary to enable Aquaforest to perform its obligations under the Agreement.

5.2 The Customer acknowledges that a delay in the Customer performing its obligations under the Agreement may result in a delay in the performance of the Services; and, subject to Clause 13.1, Aquaforest will not be liable to the Customer in respect of any failure to meet any Services timetable agreed by

Aquaforest to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms of Service.

## **6. Customer Data**

- 6.1 The Customer hereby grants to Aquaforest a non-exclusive licence to copy, store and process the Customer Data to the extent reasonably required for the performance of Aquaforest's obligations and the exercise of Aquaforest's rights under the Agreement. The Customer also grants to Aquaforest the right to sub-license these rights to the Environment operator and its other hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.
- 6.2 The Customer warrants to Aquaforest that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation.
- 6.3 The Customer acknowledges that the processing of Customer Data by the Cloud Services may be transient, and accordingly Aquaforest has no obligation to create or maintain any back-ups of the Customer Data. The Customer is responsible for creating and maintaining such back-ups and, subject to Clause 13.1, Aquaforest shall have no liability to the Customer in relation to any loss or damage arising out of the Customer's failure to do so.

## **7. Integrations with Third Party Services**

- 7.1 This Clause 7 applies to Third Party Services. Third Party Services are any hosted or cloud services that:
  - (a) are provided by a third party under contract with the Customer; and
  - (b) may transmit data to and/or from the Cloud Services.

The Cloud Services are integrated with those Third Party Services identified in the Services Package Specification. Aquaforest may integrate additional Third Party Services with the Cloud Services at any time, although Third Party Services will not be activated with respect to the Customer's use of the Cloud Services except with the express agreement of the Customer.

- 7.2 Aquaforest may remove, suspend or limit any Third Party Services integration at any time in its sole discretion.
- 7.3 The supply of Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. Aquaforest does not contract to supply the Third Party Services and is not a party to any contract for, or otherwise responsible in respect of, the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third Party Services.
- 7.4 The Customer acknowledges that:

- (a) the activation of Third Party Services may entail the transfer of Customer Data from the Cloud Services to the relevant Third Party Services; and
  - (b) Aquaforest has no control over, or responsibility in respect of, any disclosure, modification, deletion or other use of Customer Data resulting from any integration with any Third Party Services.
- 7.5 Without prejudice to its other obligations under this Clause 7, the Customer must ensure that it has in place the necessary contractual safeguards to ensure that both:
  - (a) the transfer of relevant Customer Personal Data to a provider of Third Party Services is lawful; and
  - (b) the use of relevant Customer Personal Data by a provider of Third Party Services is lawful.
- 7.6 The use of some features of the Cloud Services may depend upon the Customer activating the Third Party Services.
- 7.7 The Customer warrants to Aquaforest that the transfer of Customer Data by Aquaforest to a provider of Third Party Services in accordance with this Clause 7 will not infringe any person's legal or contractual rights and will not put Aquaforest in breach of any applicable laws.
- 7.8 Save to the extent that the parties expressly agree otherwise in writing and subject to Clause 13.1:
  - (a) Aquaforest gives no warranties or representations in respect of any Third Party Services; and
  - (b) Aquaforest shall not be liable to the Customer in respect of any loss or damage that may be caused by any Third Party Services or any provider of Third Party Services.

## **8. Charges and payments**

- 8.1 All amounts stated in or in relation to these Terms of Service are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to Aquaforest.
- 8.2 Aquaforest may elect to vary any element of the Charges, upon and from the end of any Agreement Period, by giving to the Customer not less than 45 days' prior written notice of the variation.
- 8.3 In addition, if changes in foreign exchange rates or in the charges levied by the Environment operator result in the provision of the Services under the Agreement becoming unprofitable to Aquaforest, then Aquaforest may take one of the following actions:
  - (a) Aquaforest may elect to vary the periodic Charges for the Cloud Services by giving to the Customer not less than 30 days' written

notice of the variation (providing that any variation under this Clause 8.3(a) must be reasonable and must be supported by a written and reasoned explanation given by Aquaforest to the Customer); or

- (b) Aquaforest may terminate the Agreement by giving to the Customer not less than 30 days' written notice of termination providing that, in the event of termination under this Clause 8.3(b), Aquaforest must give to the Customer a refund of Charges previously paid by the Customer to Aquaforest in consideration for Services that were to be provided after the date of termination (such amount to be calculated by Aquaforest using any reasonable methodology).

8.4 Subject to Clause 8.5, Aquaforest shall issue invoices to the Customer as follows:

- (a) with respect to Charges for Cloud Services, on or after the invoicing dates set out in the Services Package Specification (or if no dates are set out there, then monthly in advance);
- (b) with respect to Charges for additional Subscription Units during an Agreement Period, at any time following receipt of the Customer's order for those additional Subscription Units; and
- (c) with respect to any other Charges, at any time before or after the provision of the corresponding Services or carrying out of the corresponding work,

and the Customer must pay the Charges to Aquaforest within the period of 14 days following the issue of an invoice in accordance with this Clause 8.

8.5 Aquaforest may also enable the Customer to pay Charges online, in which case Aquaforest or its designated services provider shall issue a receipt to the Customer promptly following receipt of a payment.

8.6 If the Customer does not pay any amount properly due to Aquaforest under these Terms of Service, Aquaforest may:

- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
- (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

8.7 The Customer acknowledges that additional Charges may be payable by the Customer with respect to access to new features and/or functionality added by Aquaforest to the Cloud Services software after the Effective Date.

8.8 Aquaforest may suspend the provision of any or all of the Services if:

- (a) any amount due to be paid by the Customer to Aquaforest under the Agreement is overdue, and Aquaforest has given to the Customer at least 14 days' written notice, following the amount becoming overdue, of its intention to suspend Services on this basis;
- (b) the Customer breaches any other provision of the Agreement;
- (c) Aquaforest has a right to terminate the Agreement under Clause 15.3; or
- (d) Aquaforest reasonably determines that the Customer's use of the Cloud Services constitutes a security risk,

providing that any suspension of Services in accordance with the Agreement shall not affect the Customer's obligation to pay the Charges.

## **9. Trials and free Cloud Services**

- 9.1 If the Order Form specifies that the Cloud Services are provided on a time-limited trial basis, then:
- (a) the Customer will have no obligation to pay Charges with respect to Cloud Services provided during the trial period;
  - (b) during the trial period the Customer may only use the Cloud Services for testing purposes; in particular, the Customer must not use the Cloud Services during any trial for production purposes or in relation to any live service;
  - (c) Aquaforest may suspend or impose limitations on any of the Services in its sole discretion; and
  - (d) Aquaforest may terminate the Agreement at any time during the trial by giving written notice of termination to the Customer.
- 9.2 If the Order Form specifies that the Cloud Services are provided on a free-of-charge (but not time-limited trial) basis, then:
- (a) the Customer will have no obligation to pay Charges with respect to the Cloud Services;
  - (b) Aquaforest may suspend or impose limitations on any of the Services in its sole discretion; and
  - (c) Aquaforest may terminate the Agreement at any time by giving written notice of termination to the Customer.
- 9.3 The Customer must not enter into more than one contract under these Terms of Service on a trial or free-of-charge basis.

## **10. Data protection**

- 10.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.



- 10.2 The Customer warrants to Aquaforest that it has the legal right to disclose all Personal Data that it does in fact disclose to Aquaforest under or in connection with the Agreement.
- 10.3 The Customer shall only supply to Aquaforest, and Aquaforest shall only process, in each case under or in relation to the Agreement:
- (a) the Personal Data of data subjects falling within the following categories (or such other categories as may be agreed by the parties in writing): registered users of the Cloud Services; individuals whose Personal Data is contained in documents processed by the Cloud Services; and
  - (b) Personal Data of the following types (or such other types as may be agreed by the parties in writing): names and email addresses; Personal data relating to Support Services provision; and Personal Data comprised in documents processed by the Cloud Services.
- 10.4 Aquaforest shall only process the Customer Personal Data for the purposes of providing and monitoring the Services.
- 10.5 Aquaforest shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 10.
- 10.6 Aquaforest shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the geographic hosting areas specified in the Services Package Specification), as set out in these Terms of Service or any other document agreed by the parties in writing.
- 10.7 The Customer hereby authorises Aquaforest to make the following transfers of Customer Personal Data:
- (a) Aquaforest may transfer the Customer Personal Data internally to its own employees, offices and facilities in the United Kingdom insofar as necessary for the provision of the Support Services;
  - (b) Aquaforest may transfer the Customer Personal Data to its sub-processors in the jurisdictions identified in the Services Package Specification, providing that such transfers must be protected by any appropriate safeguards identified therein; and
  - (c) Aquaforest may transfer the Customer Personal Data to a country, territory or sector to the extent that the European Commission has decided that the country, territory or sector ensures an adequate level of protection for Personal Data.
- 10.8 Aquaforest shall promptly inform the Customer if, in the opinion of Aquaforest, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

- 10.9 Notwithstanding any other provision of the Agreement, Aquaforest may process the Customer Personal Data if and to the extent that Aquaforest is required to do so by applicable law. In such a case, Aquaforest shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 10.10 Aquaforest shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 10.11 Aquaforest and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 10.12 Aquaforest must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, Aquaforest shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate the Agreement on 7 days' written notice to Aquaforest, providing that such notice must be given within the period of 7 days following the date that Aquaforest informed the Customer of the intended changes. Aquaforest shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on Aquaforest by this Clause 10.
- 10.13 Aquaforest is hereby generally authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, any third party to whom the Services under the Agreement are sub-contracted. The third parties who may act as sub-processors as at the Effective Date are identified in the Services Package Specification.
- 10.14 Aquaforest shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 10.15 Aquaforest shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. Aquaforest may charge the Customer at its standard time-based charging rates for any work performed by Aquaforest at the request of the Customer pursuant to this Clause 10.15.
- 10.16 Aquaforest must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 36 hours after Aquaforest becomes aware of the breach.

- 10.17 Aquaforest shall make available to the Customer all information necessary to demonstrate the compliance of Aquaforest with its obligations under this Clause 10. Aquaforest may charge the Customer at its standard time-based charging rates for any work performed by Aquaforest at the request of the Customer pursuant to this Clause 10.17, providing that no such charges shall be levied with respect to the completion by Aquaforest (at the request of the Customer, not more than once per calendar year) of a reasonably concise information security questionnaire provided by the Customer.
- 10.18 Aquaforest shall ensure that all the Customer Personal Data is deleted from Aquaforest's systems after the provision of services relating to the processing of the Customer Personal Data, save to the extent that applicable law requires storage of any of the Customer Personal Data.
- 10.19 Aquaforest shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of Aquaforest's processing of Customer Personal Data with the Data Protection Laws and this Clause 10. Aquaforest may charge the Customer at its standard time-based charging rates for any work performed by Aquaforest at the request of the Customer pursuant to this Clause 10.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by Aquaforest of the Agreement or any security breach affecting the systems of Aquaforest.
- 10.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

## **11. Warranties**

- 11.1 The Customer warrants to Aquaforest that:
- (a) it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms of Service; and
  - (b) it enters into the Agreement as a business and not as a consumer.
- 11.2 Aquaforest warrants to the Customer that:
- (a) Aquaforest has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms of Service; and
  - (b) Aquaforest will comply with all applicable legal and regulatory requirements applying to the exercise of Aquaforest's rights and the fulfilment of Aquaforest's obligations under these Terms of Service.
- 11.3 If Aquaforest reasonably determines, or any third party alleges, that the use of the Cloud Services by the Customer in accordance with these Terms of

Service infringes any person's Intellectual Property Rights, Aquaforest may at its own cost and expense:

- (a) modify the Cloud Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- (b) procure for the Customer the right to use the Cloud Services in accordance with these Terms of Service.

11.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms of Service. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **12. Acknowledgements and warranty limitations**

12.1 The Customer acknowledges that Aquaforest relies upon the Environment operator for the provision of the Cloud Services and Aquaforest is not responsible for the acts or omissions of the Environment operator.

12.2 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms of Service, Aquaforest gives no warranty or representation that the Cloud Services will be wholly free from defects, errors and bugs.

12.3 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms of Service, Aquaforest gives no warranty or representation that the Cloud Services will be entirely secure.

12.4 The Customer acknowledges that the Cloud Services are designed to be compatible only with that software and those systems specified as compatible in the Services Package Specification or Documentation; and Aquaforest does not warrant or represent that the Cloud Services will be compatible with any other software or systems.

12.5 The Customer acknowledges that Aquaforest will not provide any legal advice under these Terms of Service or in relation to the Cloud Services; and, except to the extent expressly provided otherwise in these Terms of Service, Aquaforest does not warrant or represent that the Cloud Services or the use of the Cloud Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## **13. Limitations and exclusions of liability**

13.1 Nothing in these Terms of Service will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;

- (c) limit any liabilities in any way that is not permitted under applicable law; or
  - (d) exclude any liabilities that may not be excluded under applicable law.
- 13.2 The limitations and exclusions of liability set out in this Clause 13 and elsewhere in these Terms of Service:
  - (a) are subject to Clause 13.1; and
  - (b) govern all liabilities arising under these Terms of Service or relating to the subject matter of these Terms of Service, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms of Service and providing that Clauses 13.4 to 13.8 shall not apply to any liability of a party under Clause 10.
- 13.3 Aquaforest shall have no liability to the Customer with respect to any use of the Services on a trial or free-of-charge basis.
- 13.4 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 13.5 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 13.6 Aquaforest shall not be liable to the Customer in respect of any loss or corruption of any data, database or software.
- 13.7 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 13.8 The liability of Aquaforest to the Customer under the Agreement in respect of any event or series of related events shall not exceed the greater of:
  - (a) GBP 50,000; and
  - (b) the total amount paid and payable by the Customer to Aquaforest under the Agreement in the 12 month period preceding the commencement of the event or events.
- 13.9 The aggregate liability of Aquaforest to the Customer under the Agreement shall not exceed GBP 1,000,000.

#### **14. Force Majeure Event**

- 14.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

## **15. Termination**

- 15.1 Either party may terminate the Agreement at the end of any Agreement Period by giving to the other party not less than 30 days' prior written notice of termination.
- 15.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any material breach of the Agreement, and the breach is not remediable; or
  - (b) the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied.
- 15.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up; or
  - (d) if that other party is an individual:
    - (i) that other party dies;
    - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
    - (iii) that other party is the subject of a bankruptcy petition or order.
- 15.4 Aquaforest may terminate the Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to Aquaforest under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) Aquaforest has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 15.4.

15.5 The Agreement may also be terminated in accordance with Clause 8.3, 9.1, 9.2 or 10.12.

15.6 The Agreement may only be terminated in accordance with its express provisions.

## **16. Effects of termination**

16.1 Upon the termination of the Agreement, all of the provisions of these Terms of Service shall cease to have effect, save that the following provisions of these Terms of Service shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 3.10, 5.2, 6.3, 7.8, 8.5, 8.6, 10, 12, 13, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26.

16.2 Except to the extent that these Terms of Service expressly provide otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

## **17. Subcontracting**

17.1 Subject to any express restrictions elsewhere in these Terms of Service, Aquaforest may subcontract any of its obligations under the Agreement.

17.2 Aquaforest shall remain responsible to the Customer for the performance of any subcontracted obligations.

## **18. Assignment**

18.1 Aquaforest must not assign, transfer or otherwise deal with Aquaforest's contractual rights and/or obligations under these Terms of Service without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed, providing that Aquaforest may assign the entirety of its rights and obligations under these Terms of Service to any Affiliate of Aquaforest or to any successor to all or a substantial part of the business of Aquaforest from time to time.

18.2 The Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under these Terms of Service without the prior written consent of Aquaforest.

## **19. No waivers**

19.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

19.2 No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

## **20. Severability**

20.1 If a provision of these Terms of Service is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

20.2 If any unlawful and/or unenforceable provision of these Terms of Service would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **21. Third party rights**

21.1 The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

21.2 The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

## **22. Variation**

22.1 The Agreement may not be varied except:

- (a) at the end of an Agreement Period, by Aquaforest giving to the Customer at least 45 days' prior written notice of the variation; or
- (b) by means of a written document signed by or on behalf of each party.

22.2 Notwithstanding Clause 22.1, Aquaforest may:

- (a) vary the Services Package Specification and/or the Documentation at any time by giving to the Customer at least 30 days' written notice of the variation; and
- (b) vary the Charges in accordance with Clause 8.

## **23. Entire agreement**

23.1 These Terms of Service shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

23.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

## **24. Law and jurisdiction**

24.1 These Terms of Service shall be governed by and construed in accordance with English law.



24.2 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

## 25. Definitions

25.1 In these Terms of Service:

"**Access Credentials**" means the secure key supplied by Aquaforest to the Customer which may be used by the Customer to enable the Customer Application to access the Cloud Services;

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means a contract between the parties incorporating these Terms of Service, and any amendments to that contract from time to time;

"**Agreement Period**" means the period specified as such in the Services Package Specification, beginning on the Effective Date or at the end of a previous Agreement Period;

"**Aquaforest**" means Aquaforest Limited, a company incorporated in England and Wales (registration number 04344383) having its registered office at Midshires House Midshires Business Park, Smeaton Close, Aylesbury, Buckinghamshire, HP19 8HL;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the charges payable by the Customer to Aquaforest and specified in the Order Form, Services Package Specification or main body of these Terms of Service, or otherwise agreed by the parties in writing;

"**Cloud Services**" means those software-based services provided by Aquaforest, identified in the Order Form and specified in the Services Package Specification and Documentation, which will be made available by Aquaforest to the Customer as a service in the Environment in accordance with these Terms of Service;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Customer**" means the person or entity identified as such in the Order Form;

"**Customer Application**" means any software application of the Customer that sends data to or receives data from the Cloud Services;

**"Customer Data"** means all data transmitted by the Customer or the Customer Application to the Cloud Services and/or processed by the Cloud Services on behalf of the Customer;

**"Customer Personal Data"** means any Personal Data that is processed by Aquaforest on behalf of the Customer in relation to the Agreement, but excluding any Personal Data with respect to which Aquaforest is a data controller;

**"Data Protection Laws"** means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

**"Documentation"** means the user guide for the Cloud Services produced by Aquaforest and made available by Aquaforest on its website (as updated from time to time);

**"Effective Date"** means:

- (a) the date upon which the parties execute an Order Form, either in hard copy or by means of an online digital signature platform; or
- (b) following the Customer completing and submitting the online Order Form published by Aquaforest, the date upon which Aquaforest sends to the Customer an order confirmation;

**"Environment"** means the third party infrastructure identified in the Services Package Specification upon which the Cloud Services will be provided;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models and rights in designs);

**"Order Form"** means:

- (a) a hard-copy or digital order form signed or otherwise agreed by or on behalf of each party; or

- (b) an online order form published by Aquaforest and completed and submitted by the Customer;

**"Package"** means the package of Services, as defined on the Aquaforest website, that is purchased by the Customer;

**"Personal Data"** has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

**"Services"** means any services that Aquaforest provides to the Customer, or has an obligation to provide to the Customer, under these Terms of Service, including both the Cloud Services and the Support Services;

**"Services Package Specification"** means the specification of the Services and Packages published on the Aquaforest website (as updated from time to time);

**"Set Up Services"** means the set up services specified in the Services Package Specification;

**"Subscription Unit"** has the meaning, with respect to a particular Cloud Service, given in the Documentation and/or the Services Package Specification;

**"Support Services"** means support services relating to the use of, and the identification and resolution of errors in, the Cloud Services, but shall not include the provision of training services;

**"Term"** means the term of the Agreement, commencing and ending in accordance with Clause 1.1;

**"Terms of Service"** means all the documentation containing the provisions of the Agreement, namely the Order Form, the Services Package Specification, the Documentation and the main body of these Terms of Service, including any amendments to that documentation from time to time;

**"Third Party Services"** has the meaning given to it in Clause 7.1; and

**"Update"** means a hotfix, patch or version update to any Cloud Services software.

## **26. Interpretation**

26.1 In these Terms of Service, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

- 26.2 The Clause headings do not affect the interpretation of these Terms of Service.
- 26.3 In these Terms of Service, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.