

## FloQast Close Management Software Services Agreement

This FloQast Close Management Software Services Agreement (the “**Agreement**”) is between the entity that signed the order form (the “**Order**”) into which this Agreement is incorporated (“**Customer**”) and FloQast, Inc., a Delaware corporation with its principal place of business at 14721 Califa Street, Los Angeles, CA 91411 (“**FloQast**”). This Agreement and the Order state the terms and conditions which govern your use of the Services.

### (1) THE SERVICES.

The “**Services**” consists of (a) the FloQast Close Management Software as made available by FloQast (the “**Software**”) (b) the Support Services, and (c) the Quick Start Services.

(a) **Software.** Each order form that is executed by the parties will state the maximum number of Customer users that may use the Software. Customer may purchase the right for additional users to use the Software by at any time during the term of the Order by entering an order addendum with FloQast.

(b) **Support Services and Quick Start.** The “**Support Services**” and the “**Quick Start Services**” are described at [www.floqast.com/docs/SLA-Support-QS.pdf](http://www.floqast.com/docs/SLA-Support-QS.pdf).

Customer may use the Services purchased by each Order to support its internal business operations and to provide services to its clients during the term stated on each Order and any Renewal Terms (defined below) agreed to by the parties.

### (2) TERM.

The initial term for the Services will be that which is stated on the Order Form.

### (3) FLOQAST WARRANTIES.

FloQast warrants that:

(a) **Software Operation.** The Software will operate substantially in conformity with the documentation that is provided with the Software (the “**Documentation**”). If Customer reports that it doesn’t, the Remedy (as defined below) is that FloQast will either update the Software to comply with the warranty or provide a reasonable workaround.

(b) **Software Availability.** FloQast will make the Software available as stated in the Service Level Agreement posted at [www.floqast.com/docs/SLA-Support-QS.pdf](http://www.floqast.com/docs/SLA-Support-QS.pdf). The Remedy for a breach of this warranty is for FloQast to provide the Service Level Credits as stated in the Service Legal Agreement. If such breach is incurable, the Remedy is found under Section 10 hereto.

(c) **Quick Start Services.** FloQast will perform the Quick Start Services in a diligent, professional and technically correct manner. If FloQast doesn’t meet this standard, the Remedy is that FloQast will either reperform the services at no charge or refund an amount equal to the fees allocable to the nonconforming services.

(d) **Customer Data.** FloQast will maintain commercially reasonable administrative, physical, and technical safeguards for the protection and security of any Customer data managed, stored, and processed by the Software. If Customer data is lost or damaged, the Remedy is that FloQast will restore the affected Customer data from FloQast’s most recent backup of such Customer data. FloQast’s data backup policy is stated at [www.floqast.com/docs/Disaster-Recovery.pdf](http://www.floqast.com/docs/Disaster-Recovery.pdf).

(e) **Noninfringement.** The Services will not infringe the intellectual property rights of any third party. If a third party claims that it does, the Remedy is that FloQast will perform its obligations under the IP Claims section below.

In this Section, “**Remedy**” means Customer’s sole and exclusive remedy and FloQast’s sole obligation(s) in connection with a breach of a warranty.

THE WARRANTIES PROVIDED IN THIS SECTION ARE THE ONLY WARRANTIES PROVIDED BY FLOQAST IN CONNECTION WITH THE SERVICES. THE PARTIES AGREE THAT NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY OR EXIST, INCLUDING THE WARRANTY OF MERCHANTABILITY OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

### (4) CUSTOMER OBLIGATIONS.

(a) **Conduct.** Customer agrees that it shall not attempt to (i) disrupt the Services, (ii) interfere with another’s use of the Services, (iii) use the Services for any illegal, unethical, or improper reasons such as publishing defamatory or obscene content.

(b) **Export.** Customer acknowledges that the Services are subject to the export rules, laws, regulations, controls, and restrictions of the United States (“**Export Laws**”) and agrees that it shall fully abide by and comply with the Export Laws, such as not exporting the Services to a person, entity, or country to which exporting the Services is prohibited by the Export Laws. If Customer exports the Services, it is responsible for obtaining any permits which may be required to do and it agrees to abide by the export laws and regulations of the country to which it has made the export. Customer warrants that Customer is not an entity or person to which access to the Services is prohibited by the Export Laws. If FloQast must incur any expense such as legal fees or penalties as a result of Customer’s breach of this Section, Customer will promptly reimburse FloQast for any such expenses.

### (5) CUSTOMER DATA & FLOQAST INTELLECTUAL PROPERTY

(a) **FloQast Use of Customer Data.** Customer agrees that FloQast may use any Customer data Customer enters or downloads into the Software or otherwise provides to FloQast as part of the Services. FloQast agrees that such Customer data will be Confidential Information (defined below) and that FloQast may only use the Customer data to provide the Services to Customer.

(b) **FloQast's Intellectual Property.** Customer acknowledges that FloQast and its licensors own all intellectual property rights in and to the FloQast Close Management Software. Customer agrees that the only rights it has to the FloQast Close Management Software are those expressly granted by this Agreement and each Order. Customer agrees that (i) it shall not resell, distribute, disclose, demonstrate, or otherwise make the Software or the Documentation available or accessible to any third party, including FloQast competitors and investment firms and, (b) it shall not attempt to reverse engineer or discover the source code of the Software.

#### (6) **PAYMENT & TAXES.**

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Customer agrees to pay invoices from FloQast within thirty days of the date it receives each invoice. If Customer has a reasonable basis to dispute an invoice, Customer may withhold payment of the disputed portion until the dispute has been resolved provided that Customer (a) notifies FloQast in writing of the dispute within fifteen days of its receipt of the invoice and (b) works with FloQast in good faith and in a timely way to resolve the dispute.

Customer agrees that it shall pay all taxes which FloQast is obligated by law to collect from its customers in connection with the Services, such as sales tax.

#### (7) **CONFIDENTIAL INFORMATION**

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(a) **Confidential Information.** During the course of our business relationship, the parties may disclose information to each other that the disclosing party (the "**Discloser**") considers to be its confidential or proprietary information ("**Confidential Information**"). Confidential Information includes information such as business plans, customer names, financial information, product information, the terms of this Agreement or any order hereunder, methods and processes, pricing, the terms of any order between the parties, the terms of this Agreement and customer information. If information is not marked as "confidential", it shall still be considered Confidential Information if a reasonable person would understand it to be confidential or proprietary under the circumstances of its disclosure.

(b) **Obligations.** The parties agree to not disclose the other's Confidential Information to any third party and to use no less than reasonable and appropriate measures to protect the Confidential Information from access by or disclosure to third parties.

(c) **Exceptions.** The obligations of the preceding section shall not apply to (a) information that it is in the public domain through no acts or omissions of the party receiving it (the "**Receiver**"), (b) information that the Receiver already has in its possession without an obligation of confidentiality, and (c) information that the Receiver develops on its own without reference to the Discloser's Confidential Information.

Additionally, the Receiver may disclose the Confidential Information (a) to its employees, contractors, legal advisors, and financial advisors with a need to know and who are under a confidentiality obligation with the Receiver that does not allow them to disclose the Confidential Information or, (b) as may be required by law or a legal process, provided that the Discloser is given an opportunity to challenge or narrow the disclosure requirement to the extent the Receiver is legally permitted to allow the Discloser do so.

#### (8) **THIRD PARTY CLAIMS.**

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(a) **IP Claims.** FloQast shall, at its expense, defend Customer against claims by a third party alleging that the Services infringe the intellectual property rights of the third party ("**IP Claim**"). Additionally, FloQast shall pay any final judgment or settlement of the IP Claim and reimburse Customer for any reasonable expenses it necessarily incurs in responding to the IP Claim. Customer agrees that it shall (a) promptly provide written notice to FloQast following its receipt of the IP Claim, (b) authorize FloQast to assume sole control of the settlement of the IP Claim, and (c) provide FloQast with such assistance with the IP Claim as FloQast may reasonably request.

FloQast shall have no obligations for any IP Claim that is based on (a) a modification of the Services not made by FloQast or (b) a combination of the Services with a third party product other than those stated in the Documentation as being required or compatible with the Services.

If Customer's use of the Services is enjoined or if FloQast reasonably believes it will be, FloQast shall either (a) obtain the right for Customer to continue to use the enjoined component(s), (b) replace the enjoined components with non-infringing components, or (c) if neither of the preceding options are commercially reasonable for FloQast to provide, then FloQast may terminate the Services and refund to customer any unused Services fees as of the date of the termination.

This section states FloQast's entire obligation and Customer's sole remedy in connection with an IP Claim.

(b) **Claims Against FloQast.** Customer shall, at its expense, defend FloQast against claims by a third party alleging harm to the third party caused by Customer's use of data ("**Customer Claim**"). Additionally, Customer shall pay any final judgment or settlement of the Customer Claim and reimburse FloQast for any reasonable expenses it necessarily incurs in responding to the Customer Claim. FloQast agrees that it shall (a) promptly provide written notice to Customer following its receipt of the Customer Claim, (b) authorize Customer to assume sole control of the settlement of the Customer Claim, and (c) provide Customer with such assistance with the Customer Claim as Customer may reasonably request.

**Settlements.** FloQast may not settle an IP Claim and Customer may not settle a Customer Claim without the other's consent if the settlement would require the party being defended to (i) pay any amounts not reimbursable to the defended party by the other party or, (ii) require the defend party to make an admission of wrongdoing or fault.

**(9) LIMITATION OF LIABILITY FOR DAMAGES.**

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The parties agree that their liability to the other for damages in event of a breach of this Agreement or an Order shall be as follows:

(A) **NO CONSEQUENTIAL DAMAGES.** EXCEPT AS STATED IN IN THE FOLLOWING SENTENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES, HOWEVER ARISING AND WHETHER OR NOT FORESEEABLE. THIS LIMITATION SHALL NOT APPLY TO DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(B) **LIMIT TO AMOUNT.** EXCEPT AS STATED IN IN THE FOLLOWING SENTENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND IN AN AMOUNT GREATER THAN THE FEES PAID OR OWED FOR THE SERVICES THAT ARE THE SUBJECT OF THE BREACH. THIS LIMITATION SHALL NOT APPLY TO DAMAGES CAUSED BY (A) A PARTY'S BREACH OF THE CONFIDENTIAL INFORMATION SECTION OF THIS AGREEMENT, (B) A PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT, (C) CUSTOMER'S BREACHES OF THE FLOQAST INTELLECTUAL PROPERTY, CONDUCT, OR EXPORT SECTIONS, (D) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 HERETO, (E) REASONABLE LEGAL FEES A PREVAILING PARTY MAY INCUR AND BE AWARDED IN CONNECTION WITH A BREACH.

**(10) TERMINATION.**

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**Termination.** Either party may terminate this Agreement or an Order for a breach of this Agreement or the Order if (i) the breach is curable and the breaching party does not cure the breach within thirty days of its receipt of written notice of the breach or (ii) if the breach is not curable and breaching party does not provide reasonable assurances of actions taken to prevent a recurrence of the breach. In the event termination due to breach by FloQast pursuant to the previous sentence, Customer will be entitled to a pro rata refund of all unused license fees as of the date of termination.

If this Agreement is terminated but Orders are still in effect, this Agreement will continue to govern those Orders. If an Order is terminated, then Customer must cease using the Services on the effective date of the termination and promptly destroy any login credentials to the Services it possesses associated with the terminated Order and require its contractors that may be using the Services to do the same. Upon Customer's request, FloQast will promptly return Customer's Confidential Information, other than as may be retained in its routine data back-up files.

**(11) GENERAL TERMS**

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(a) **Plain Language.** That parties confirm that they intend for the plain language of this Agreement and all Orders to clearly and unambiguously express their intent at the time of contracting. Implied meaning or interpretation that is not reasonably evident from the plain language of this Agreement or an Order shall have no legal effect. Each use of "includes", "including", or "such as" shall mean "includes, without limitation", "including without limitation, or "such as, without limitation", respectively. Each use of "section" means "section of this Agreement". Section headings are provided for convenience and have no independent meaning.

(b) **Purchase Orders.** If Customer issues purchase orders to FloQast under this Agreement or in connection with an Order (each, a "PO"), they shall only serve to confirm the applicable quantities and prices and Customer's commitment of funds to the purchase. No terms on the PO shall apply or be of any legal effect. FloQast may reject a PO if it is incorrect or inaccurate.

(c) **Governing Law.** Any legal dispute regarding this Agreement shall be governed by the law of California, without giving effect to any conflict of laws principle that would require using the law of a different state. Any actions for breach or equitable relief under this Agreement or an Order may only be brought in the state or federal courts of Los Angeles county in the state of California.

(d) **Assignment.** Except in connection with a change of control or a sale of assets, neither party may assign this Agreement or an Order without the written consent of the other, which may not be unreasonably withheld. Any attempted assignment in conflict with the preceding sentence shall be considered ineffective and void.

(e) **Waiver and Severability.** A party's failure to enforce its rights under this Agreement may not be construed as a waiver of its right to do so. If a provision of this Agreement or an Order is found to be unenforceable, (i) it shall be enforced to the extent possible to effectuate the parties' intent and (ii) the other provisions of the Agreement or Order shall remain in full force and effect without modification.

(f) **Relationship of the Parties.** This Agreement and the Orders are between two independent entities and the parties agree that that neither may act on behalf of the other.

(g) **Third Parties.** Customer may allow its contractors to use the Services, but if it does, it agrees that it shall be liable to FloQast for any acts and omissions of those contractors that, if done or not done by Customer, would be a breach of this Agreement or an Order. Except as stated in the previous sentence, there are no intended or implied third party beneficiaries of this Agreement or any Order.

(h) **Excused Performance.** Each party's performance under this Agreement or an Order will be excused for as long as the performance is made impracticable as a result of a "force majeure" event such as a natural disaster, accident, strike, external infrastructure failure, or the negligent or malicious acts of a third party.

- (i) **Notices.** Notices in connection with this Agreement shall be sent to the parties' addresses stated in this Agreement and shall be sent by tracked US mail, a nationally recognized delivery service such as UPS or FedEx or email with read receipts or an alternative form of confirming delivery and receipt of the email.
- (j) **Feedback.** If Customer provides feedback to FloQast about the Services, Customer agrees that FloQast may use that feedback (less any Customer Confidential Information included in it) as it sees fit.
- (k) **Entire Agreement and Order of Precedence.** The parties agree that this Agreement and any Orders are the entire and exclusive set of terms governing the Services. No other oral or written communications, including POs, made prior to or at the time the parties sign this Agreement or an Order shall have any legal force or effect. Changes to this Agreement or an Order may only be made by a written amendment signed by both parties. In the event of a conflict or ambiguity between this Agreement and an Order, the terms of the Order shall take precedence and prevail.