

Aquant

TERMS OF SERVICE

These Terms of Service (the “Terms”) and the associated Order Form for Services (the “Order”, and together with these Terms, the “Agreement”) govern your access to and use of the Aquant Services (which include the Aquant hosted services, and the Software (as defined below), all together, the “Services”).

By using the Services you are agreeing to the terms and conditions of the Agreement. If you are using the Services on behalf of an organization, you are agreeing to the Agreement on behalf of that organization and representing that you have the authority to bind that organization to the Agreement. In that case, “you” and “your” will refer to that organization. Aquant and you are each a “Party” to the Agreement. You may use the Services only in accordance with the Agreement.

Aquant may, in our sole discretion, modify the Terms via email or by updating this Agreement. The then-current version of the Terms will supersede all earlier versions. By continuing to access and use Aquant Services, you agree to any such modifications.

1. Provision of the Service

1.1. Provision Generally.

Aquant will provide Customer with access to Aquant’s software (the “Service”) in accordance with the terms and conditions of this Agreement.

1.2. Grant of Rights.

Subject to the terms and conditions of this Agreement, Aquant hereby grants to Customer a limited, non-exclusive, non-transferable right for Customer’s Users to access and use the Service, solely for Customer’s internal business purposes during the Term. A “User” shall mean an employee, independent contractor, distributor, partner or end customer of Customer. All rights not expressly granted to Customer are reserved by Aquant and its licensors. There are no implied rights.

1.3. Restrictions.

Customer shall not (and shall not allow any third party to): (a) use the Service for the benefit

of any third party, or to develop or market any product, software or service that is functionally similar to or derivative of the Service, or for any other purpose not expressly permitted herein; (b) permit any non-User to access or use the Service; (c) sell, distribute, rent, lease, service bureau, post, link, disclose or provide access to the Service, directly or indirectly, to any third party; or (d) alter, modify, debug, reverse engineer, decompile, disassemble, or otherwise attempt to derive or gain access to any software (including source code) associated with the Service. All acts and omissions of Users shall be deemed to be those of Customer, and Customer shall be responsible therefor. Customer shall be responsible for all use of the Service using passwords issued to Customer and Users. Customer shall notify Aquant immediately of any actual or suspected unauthorized use of its passwords for the Service. Without limiting any of its other rights or remedies, Aquant reserves the right to suspend any User's right to access the Service if Aquant reasonably believes that such User has materially violated the restrictions and obligations in this Agreement (in which case, it shall provide Customer prompt written notice of such suspension).

1.4. Aquant Technology.

In connection with providing the Service, Aquant shall operate and support the hosted environment used by Aquant to provide the Service, including the Aquant Technology, the server hardware, disk storage, firewall protection, server operating systems, management programs, web server programs, documentation and all other technology or information so used by Aquant. As used herein, "Aquant Technology" means all of Aquant's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by Aquant in providing the Service.

1.5. Downtime.

Aquant shall use commercially reasonable efforts to provide access to the Service twenty-four (24) hours a day, seven (7) days a week. Customer agrees that from time to time the Service may be inaccessible or inoperable for various reasons, including (a) equipment malfunctions; (b) periodic maintenance procedures or repairs which Aquant may undertake from time to time; or (c) causes beyond the reasonable control of Aquant, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "Downtime"). Aquant shall use

commercially reasonable efforts to provide twenty-four (24) hour advance notice to Customer in the event of any scheduled Downtime. Aquant shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Service in connection with Downtime, whether scheduled or not.

1.6. Ownership.

Customer acknowledges and agrees that as between Aquant and Customer, all right, title and interest in and to the Service (including the data, information, text, images, designs, sound, music, marks, logos, compilations (meaning the collection, arrangement and assembly of information) and other content on or made available through the Service, other than Customer Data), the Aquant Technology and all improvements and derivatives of the foregoing (including all intellectual property and proprietary rights embodied therein or associated therewith) are and shall remain owned by Aquant or its licensors, and this Agreement in no way conveys any right, title or interest in the Service or the Aquant Technology other than a limited right to use the Service in accordance with the terms and conditions herein. No right or license is granted hereunder to Customer under any trademarks, service marks, trade names or logos. Customer shall not remove any Aquant trademark, service mark or logo, or any proprietary notices or labels (including any copyright or trademark notices) from the Service.

2. Fees and Payment

2.1. Fees.

Customer shall pay all agreed upon subscription fees (the "Fee") for the Services as set forth in the applicable Order Form and in accordance with terms set forth in such Order Form.

2.2. Payment Terms.

Fees are invoiced in full upon signature unless specified otherwise in Order Form. Payment of invoices are due within thirty (30) days of invoice date. Customer shall make payments hereunder by wire transfer to the account specified in writing by Aquant, and without deduction of any charges, taxes or other amounts.

2.3. Taxes.

All amounts due hereunder are exclusive of all sales, use, excise, service, value added, or

other taxes, duties and charges of any kind (whether foreign, federal, state, local or other) associated with this Agreement, the Service, or Customer's and its Users access to the Service. Customer shall be solely responsible for all such taxes, duties and charges (except for taxes imposed on Aquant's income), which may be invoiced by Aquant from time-to-time.

2.4. Travel Expenses

Customer shall reimburse Aquant for reasonable and necessary expenses directly related to the provision of services, including but not limited to transportation, accommodation, meals, and other incidental expenses incurred during the course of business travel. Aquant will invoice Customer for such travel expenses with the same payment terms as noted under the Payment Method section of this Agreement. Aquant shall maintain accurate and detailed records of all travel expenses, including receipts and any other supporting documentation. Such documentation may be submitted to Customer if requested.

3. Term & Termination

3.1. Term.

The term of this Agreement shall commence on the Term Start Date in the Order Form and continue for the time period noted in the Term in the Order Form (the "Term").

3.2. Renewal.

At the end of the term outlined in the applicable Order Form, the Agreement and Order shall be renewed automatically for succeeding terms of equal duration unless either party gives notice to the other at least 60 days prior to the expiration of any term of said party's intention not to renew this Agreement.

3.4. Termination for Breach.

Either Party may terminate this Agreement by written notice thereof to the other Party, if the other Party materially breaches this Agreement and does not cure such breach within 30 days after written notice thereof.

3.5. Effects of Termination; Survival.

Upon any termination of this Agreement: (a) all rights granted to Customer hereunder shall terminate and Aquant shall no longer provide access to the Service to Customer, and (b)

Customer shall cease and cause its Users to cease using the Service. Any obligations that have accrued prior to termination shall survive termination of this Agreement. In addition, the following Sections, as well as any other provisions herein which by their nature should survive, shall survive termination of this Agreement: Sections 1, 5, 6, 7, 8, 9, 11, 12.

4. Customer Data

4.1. Data

All data and information which the Customer inputs into the Service (the “Customer Data”) is stored in a private and secure fashion, and will not be used by Aquant except as permitted herein. Customer hereby grants to Aquant a limited, non-exclusive, non-transferable, royalty-free right to use the Customer Data solely in connection with providing the Service to Customer, and improving and developing the Service.

5. Representations and Warranties

5.1. General Representations and Warranties.

Each Party hereby represents and warrants to the other Party that: (a) it is a corporation, company or other entity (as applicable) duly organized, validly existing and in good standing in its jurisdiction of organization; (b) its execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary organizational action on its part; (c) the provisions set forth in this Agreement constitute legal, valid, and binding obligations of such Party enforceable against such Party in accordance with their terms, subject to bankruptcy, insolvency and other laws affecting creditors’ rights generally; and (d) its execution, delivery and performance of this Agreement do not and will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under, any agreement or other obligation to which such Party is subject.

5.2. Aquant Limited Warranty.

Aquant warrants that it will provide the Service in a competent and workmanlike manner. Aquant does not warrant that it will be able to correct all reported defects or that use of the Service will be uninterrupted or error free. Aquant makes no warranty regarding features or services provided by any third parties. Aquant retains the right to modify its services and the Aquant Technology in its sole discretion; provided that doing so does not have a material

adverse impact on the Service hereunder. Customer's sole remedy for Aquant's breach of the warranty in this paragraph shall be that Aquant shall remedy the applicable error, or if Aquant is unable to do so in a timely manner, refund to Customer actual damages up to a limit of the fees paid for the Service for the period during which the breach of warranty occurred.

5.3. Disclaimer.

EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 5.1 AND 5.2 ABOVE, AQUANT MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WITH RESPECT TO THE SERVICE (IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE), INCLUDING ANY WARRANTY (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, (B) THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE OR OPERATE WITHOUT ERROR, (C) AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE, OR (D) AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED FROM THE SERVICE.

6. Limitations of Liability

6.1. Damages Cap.

TO THE FULLEST EXTENT PERMISSIBLE BY LAW, AQUANT'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO AQUANT UNDER THIS AGREEMENT DURING THE PRIOR 12 MONTHS.

6.2. Disclaimer of Indirect Damages.

EXCEPT FOR (A) CUSTOMER'S OBLIGATION TO PAY ALL AMOUNTS DUE HEREUNDER, (B) ITS INDEMNIFICATION OBLIGATIONS OR (C) ITS BREACH OF ANY INTELLECTUAL PROPERTY OR CONFIDENTIALITY OBLIGATIONS OR RESTRICTIONS HEREIN (INCLUDING ANY LIMITATIONS OR RESTRICTIONS ON USE OF THE SERVICE), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL,

EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING LOSS OF DATA, PROFITS OR REVENUE) ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT, WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

7. Indemnification

7.1. Aquant Indemnification.

Aquant shall defend, indemnify and hold harmless Customer and its directors, officers, employees and agents (“Customer Indemnified Parties”) from and against any third party claims, actions, proceedings, demands, lawsuits, damages, liabilities and expenses (including reasonable attorneys’ fees and court costs) (collectively, “Claims”) to the extent based on any claim that the Service infringes, misappropriates or otherwise violates (collectively, “Infringes”) any third party intellectual property or proprietary right (excluding patents).

7.2. Customer Indemnification.

Customer shall defend, indemnify and hold harmless Aquant and its directors, officers, employees, agents and providers (“Aquant Indemnified Parties”) from and against any Claims to the extent based on any claim that the Customer Data Infringes any third party intellectual property or proprietary right (excluding patents).

7.3. Indemnification Process.

As conditions of the indemnification obligations in Sections 7.1-7.2 above: (a) the applicable Customer Indemnified Party or Aquant Indemnified Party (the “Indemnitee”) will provide the indemnifying Party (the “Indemnitor”) with prompt written notice of any Claim for which indemnification is sought (provided that failure to so notify will not remove the Indemnitor’s indemnification obligations except to the extent it is prejudiced thereby), (b) the Indemnitee will permit the Indemnitor to control the defense and settlement of such Claim, and (c) the Indemnitee will reasonably cooperate with the Indemnitor in connection with the Indemnitor’s evaluation, defense and settlement of such Claim. In defending any Claim, the Indemnitor shall use counsel reasonably satisfactory to the other Party. The Indemnitor shall not settle or compromise any such Claim or consent to the entry of any judgment without the prior written consent of the other Party (not unreasonably withheld).

7.4. Exclusions.

Aquant's obligations in Section 7.1 above shall not apply to any Claim to the extent arising from or relating to (a) misuse of the Service (including any use not strictly in accordance with the documentation therefor, Aquant's instructions, and this Agreement), (b) any modification, alteration or conversion of the Service not created or approved in writing by Aquant, (c) any combination of the Service with any computer, hardware, software or service not provided by Aquant, (d) Aquant's compliance with specifications or other requirements of Customer, or (e) any third party data or Customer Data. If the Service is or may be subject to a Claim of Infringement described in Section 7.1 above, Aquant may, at its cost and sole discretion: (i) obtain the right for Customer to continue using the Service as contemplated herein; or (ii) replace or modify the Service so that it becomes non-Infringing without substantially compromising its principal functions; or (iii) to the extent the foregoing are not commercially reasonable, terminate this Agreement and return to Customer any pre-paid fees for the Service associated with the then-remaining Term. Aquant's obligations in this Section 7 shall be Aquant's sole obligations, and Customer's sole remedies, in the event of any Infringement of intellectual property or proprietary rights by or related to the Service.

8. Confidentiality

8.1. Definition.

"Confidential Information" means information that is disclosed by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") hereunder during the Term that is clearly labeled or identified as confidential or proprietary when disclosed, or that, under the circumstances, should reasonably be treated as confidential, except that "Confidential Information" shall not include any information that (a) is or becomes generally known to the public through no fault of, or breach of this Agreement by, the Receiving Party; (b) is rightfully in the Receiving Party's possession at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (d) is rightfully obtained by the Receiving Party from a third party without restriction on use or disclosure. In addition, (i) the terms and conditions of this Agreement shall be deemed to be Confidential Information of both Parties; and (ii) the Service and Aquant Technology shall be deemed Confidential Information of

Aquant, regardless of whether or not they are labeled or identified, or would reasonably be considered confidential.

8.2. General Obligations.

Each Party agrees that it will during the Term and thereafter (a) not disclose the other Party's Confidential Information to any third party (other than as permitted in the last sentence of this paragraph); (b) use the other Party's Confidential Information only to the extent reasonably necessary to perform its obligations or exercise its rights under this Agreement; (c) disclose the other Party's Confidential Information only to those of its employees and independent contractors who reasonably need to know such information for purposes of this Agreement; and (d) protect all Confidential Information of the other Party from unauthorized use, access, or disclosure in the same manner as it protects its own confidential information of a similar nature, and in no event with less than reasonable care. Notwithstanding the above, this paragraph shall not prohibit: (i) a Party from disclosing Confidential Information of the other Party to the extent required by applicable law, rule or regulation (including a court order or other government order) or the rules and regulations of the SEC or any national securities exchange; provided that such Party provides the other Party prior written notice of such disclosure, to the extent practicable, and reasonably cooperates with efforts of the other Party to seek confidential treatment thereof, to the extent such cooperation is requested by the other Party; or (ii) a Party from disclosing the terms and conditions of this Agreement to its attorneys and financial advisors, or current or potential lenders, other sources of financing, investors or acquirers; provided that such third parties are bound by confidentiality obligations (provided further that such third parties are only permitted to use such information for the purpose of advising, lending or providing financing to, or investing in or acquiring, such Party, as applicable).

8.3. Return or Destruction.

Except as otherwise expressly provided in this Agreement, the Receiving Party will return to the Disclosing Party, or destroy or erase, the Disclosing Party's Confidential Information in tangible form, upon the termination of this Agreement; provided that (a) Receiving Party may retain a copy of Disclosing Party's Confidential Information solely for the purposes of tracking Receiving Party's rights and obligations hereunder with respect thereto, (b) Receiving Party may retain copies of Disclosing Party's Confidential Information solely to the extent required

by law or by applicable professional standards which require such Party to retain copies of its working papers, and (c) Receiving Party may retain Disclosing Party's Confidential Information solely to the extent reasonably necessary for Receiving Party to exercise rights or perform obligations under this Agreement that survive such termination.

9. Miscellaneous

9.1. Compliance with Laws.

Each Party shall comply with all laws, rules, regulations and ordinances applicable to its activities hereunder.

9.2. Assignment.

Except in connection with sale of its business or assets, neither Party may assign this Agreement, or assign any of its rights or delegate any of its obligations under this Agreement, without the prior written consent of Aquant. This Agreement will bind and inure to the benefit of each Party's successor and permitted assigns.

9.3. Entire Agreement; Amendment.

This Agreement contains the complete understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, oral or written, with respect thereto. No pre-printed terms on any purchase order, invoice or similar document issued in relation to this Agreement shall have any effect on the Parties or this Agreement. This Agreement may be amended or modified only by an express written agreement signed by duly authorized representatives of both Parties.

9.4. Notices.

All notices required or permitted by this Agreement shall be in writing and may be delivered personally, overnight delivery certified mail (return receipt requested), or e-mail with electronic confirmation to the address below:

Aquant, Inc.
1234 Chestnut Street Suite 106
Newton Upper Falls, MA 02464

With a copy e-mailed to:

orders@aquant.ai

Any notice shall be deemed to have been received as follows: (a) by personal delivery, upon receipt; (b) by guaranteed overnight delivery, one business day after dispatch; or (c) by certified mail, as evidenced by the return receipt. Email notices are effective only if the sender receives confirmation of receipt from the recipient.

9.5. Force Majeure.

Aquant shall not be liable or responsible to Customer, nor be considered to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any provision of this Agreement to the extent such failure or delay is caused by or results from any act, circumstance or other cause beyond the reasonable control of Aquant, including acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable technology or components, telecommunication breakdown, or power outage.

9.6. Choice of Law.

This Agreement is and will be governed by and construed under the laws of the State of New York, USA, without giving effect to any conflicts of laws provision thereof or of any other jurisdiction that would produce a contrary result. The Parties hereby consent to the jurisdiction of any federal or state court located in New York, New York for any claim or other proceeding related to this Agreement or their activities hereunder, and waive any objections of improper venue or inconvenient forum.

9.7. Injunctive Relief.

Each Party acknowledges that its breach of any intellectual property or confidentiality obligations or restrictions herein (including any limitations or restrictions on use of the Service) will cause substantial harm to the other Party that could not be remedied by payment of damages alone. Accordingly, the other Party will be entitled to seek preliminary,

temporary and permanent injunctive relief, and other equitable relief, for any such breach, without any requirement to post bond, in any court of competent jurisdiction.

9.8. Relationship of the Parties.

The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise or employment relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

9.9. Waiver.

No waiver by either Party of any of the provision of this Agreement is effective unless explicitly set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9.10. Severability.

If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or invalidate or render unenforceable such provision in any other jurisdiction.

9.11. Counterparts.

This Agreement may be executed in two counterparts (which may be delivered by .pdf or other format acceptable to the Parties), each of which shall be an original and both of which taken together shall form one agreement.