



HYDROGEOSPHERE SOFTWARE LICENSE AGREEMENT

CAREFULLY READ THE TERMS AND CONDITIONS BELOW AND IN ANY APPLICABLE ADDENDUM (COLLECTIVELY, THE “**AGREEMENT**”) BEFORE INSTALLING OR USING THE PROGRAM (AS DEFINED BELOW) OR DOCUMENTATION (AS DEFINED BELOW). YOUR RIGHT TO USE THE PROGRAM AND DOCUMENTATION IS CONDITIONED ON ACCEPTANCE OF, AND COMPLIANCE WITH, THIS AGREEMENT.

CLICKING TO ACCEPT THIS AGREEMENT AS PART OF THE INSTALLATION PROCESS FOR THE PROGRAM MEANS THAT: YOU (BEING EITHER AN INDIVIDUAL OR AN ENTITY. IN THE LATTER CASE YOU ACKNOWLEDGE THAT YOU ARE AN AUTHORIZED REPRESENTATIVE COMPLETING THIS PROCESS ON BEHALF OF AN INDIVIDUAL OR YOUR INSTITUTION) ARE ACCEPTING AND AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT WISH TO ACCEPT AND AGREE TO THIS AGREEMENT, CLICK THE APPROPRIATE BUTTON TO CANCEL THIS PROCESS, DO NOT INSTALL, ACTIVATE OR USE THE PROGRAM (INCLUDING ANY DOCUMENTATION). PROVIDED THE PROGRAM HAS NOT BEEN ACTIVATED AND IS WITHIN 30 DAYS OF THE ORIGINAL PURCHASE DATE, YOU WILL RECEIVE A REFUND OF THE PURCHASE PRICE LESS A PROCESSING FEE THAT AQUANTY MAY CHARGE.

1. Definitions. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following words and expressions will have the following meanings:
 - a. “Aquanty”, “we”, “us”, or “our” means Aquanty Inc.
 - b. “Documentation” means any documentation distributed with the Program.
 - c. “License Option” means the specific rights, restrictions, and obligations under which You may install and use the Program pursuant to this Agreement, including those related to the license term associated with the License Option acquired, as selected in the Order Form.
 - d. “Order Form” means the ordering document entered into between you and Aquanty to confirm the terms of your purchase configuration including, without limitation, License Option.
 - e. “Program” means Aquanty software known as HydroGeoSphere.
 - f. “You” means the party purchasing a license to the Program as set out in the Order Form.
 - g. “Maintenance Services” means maintenance services provided by Aquanty whereby you will be entitled to receive (i) any modification, improvement, enhancement, update, upgrade, new release and/or other change made to the Program as made available by Aquanty from time to time; and (ii) instructional or supplementary documentation related to the Program and online user groups as made available by Aquanty from time to time.
2. Duration of License. Unless the Program has been licensed by an Institution at Academic Prices (as such terms are defined in the Academic Addendum to this Agreement), the term of Your license may be any one of the following:
 - (a) Term or Subscription License: You may purchase a license to use the Program for a specific term (a “Term License”). Unless terminated by Aquanty in accordance with the terms and conditions of this Agreement, each Term License will expire automatically, immediately after the corresponding time period or term specified in the Order Form expires, unless prior to such expiry date You renew the License by remitting the then-current term-based renewal fee or are in good standing under a maintenance or similar agreement with Aquanty that entitles You the right to receive Maintenance Services (a “Maintenance Agreement”). You shall immediately cease all use of the Program at the expiry of the term and permanently delete such Program from its CPU. You understand that the Program may be programmed to stop operating at the expiration of the licensed term (by a programmed determination and not through external communication or intervention).
 - (b) Perpetual Licenses: You may purchase a perpetual license entitling You to use the Program indefinitely, unless and until terminated by Aquanty in accordance with this Agreement.
 - (c) Trial Licenses. If You have been granted a license to a trial version of the Program, i.e., to test the

Program without any payment obligation, You may only use the Program to test the functionality of the Program and, for greater certainty, You may not use the Program for any commercial or production use. Trial licenses shall be for the license type we specify and shall last for the length of time specified by us, in our sole discretion, and may be cancelled at any time by us, in our sole discretion. You acknowledge that trial versions of the Program contain time lock and/or time bomb functionality and code. WE SHALL HAVE NO WARRANTY OBLIGATIONS FOR TRIAL LICENSES. With respect to trial licenses, this subparagraph 2(c) shall prevail over any conflicting provisions in this Agreement.

Where the Program has been licensed by an Institution at Academic Prices, You will have a perpetual license entitling You to use the Program indefinitely, unless and until terminated by Aquanty in accordance with this Agreement.

3. License Grant. Subject to the terms of this Agreement, Aquanty hereby grants You during the duration of this Agreement a non-exclusive, non-transferable, revocable, personal, non-transferable limited license to install, run, use, operate, and perform (collectively “use”) the Program and Documentation solely on a designated stand-alone node-locked personal computer that is owned, leased or controlled by You (“CPU”).
 - a. Object Code. The license granted herein applies only to the object code version of the Program. Licensee shall have no rights whatsoever with respect to the source code for the Program.
 - b. Ownership. All right, title and interest in and to the Program and Documentation, including without limitation, copyrights and trade secrets, are, and shall at all times remain, the exclusive property of us and/or our licensors, and You shall have no right, therein, except the expressly limited license rights granted herein.
 - c. Non-transferable. You may not sell, license, sublicense, publish, display, distribute, disseminate, assign, or otherwise transfer (whether by sale, exchange, lease, rent, gift, loan, or otherwise) to any a third party the Program, any copy or portion thereof, in whole or in part, on a temporary or permanent basis.
 - d. Reservation of Rights. You acknowledge that all rights with respect to the Program, whether now or hereafter existing, which are not expressly granted to You are reserved to us or our licensors. You shall not modify or create any derivative, compilation, or collective work involving the Program. You shall take appropriate action by instruction, agreement, or otherwise with any persons permitted access to the Program, so as to enable You to satisfy all Your obligations under this Agreement.
 - e. License Subject to Payment. The license granted herein is contingent upon Your timely and complete payment of all amounts due and payable to us.
 - f. Use.
 - i. A single individual may use one concurrent session of a Program on a single designated physical computer at any given time. The Program may not be accessed or used over a network.
 - ii. If the Program has been licensed by an Institution at Academic Prices, Your use of such Program will be subject to the additional terms and conditions in the applicable Addendum to this Agreement.
 - iii. You may use the Program on multicore/multiprocessor computers.
 - iv. You may not transfer the Program to a CPU that is different from the one on which it was initially installed, even temporarily. In the event of computer malfunction, or You are upgrading Your computer and wish to transfer the Program to the substitute CPU, please contact Aquanty. Such transfer may be subject to the payment of applicable transfer fees.
 - v. You may use the Program only for Your internal operations. For the purposes of this Agreement, “internal operations” means use of the Program by Your employees or those of Your subsidiaries or parent company and for the performance of consulting or research for third parties who engage You as an employee or independent contractor. You also shall not disclose any characteristics or technical capabilities of the Program to any third party without our prior written authorization.
 - g. No Reverse Engineering. You shall not decompile, reverse engineer, disassemble, isolate, separate, or otherwise attempt to derive source code from any Program(s) or Documentation, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. All copies of Program and Documentation shall contain all copyright and proprietary notices as in the

original. You shall not remove, obscure, or alter copyright notices, trademark notices, or other proprietary rights notices affixed to or contained within the Program or Documentation.

- h. Additional Restrictions. Nothing in this Agreement gives You the right to, and You shall not: (i) disclose any download or purchase codes and/or license files related to the Program and/or Documentation, if applicable, to a third party or allow them to be used except for installation and use of the Program as provided herein; or (ii) violate any local, provincial, state, federal or foreign law, treaty, regulation or convention applicable to You in connection with Your use of the Program.
- i. Authentication and Validation. We may use various technologies to authenticate and validate Your use of the Program and to process related information in our information systems. If required by Aquanty, You will need to activate the Program through the use of the Internet or by means other than through the use of the Internet, such as by telephone or email; toll charges may apply. Product activation may require a one-time exchange of information between Your computer, as applicable, and Aquanty to conduct an authentication process and confirm that You have a licensed copy of the Program. Aquanty will use the information received from Your installation or CPU only for activation and authentication of the Program. You agree to allow the Program to conduct this authentication process.
- j. U.S. Government. The Program is a commercial product that has been developed exclusively at private expense. If You are acquiring this license to the Program on behalf of any unit or agency of the United States. Federal government (“US Government”), the Us Government shall only have the rights for this Commercial Computer Software and Commercial Computer Software Documentation as set forth herein in accordance with the applicable Federal Acquisition Regulations for the acquisition of Commercial Computer Software and Commercial Computer Software Documentation. In particular, for units of the Department of Defense: the Government shall have only the rights specified in the license under which the Program, as commercial computer software, and the Documentation, as commercial computer software documentation, were obtained, as set forth in subparagraph (a) of the Rights in Commercial Computer Software or Commercial Software Documentation Clause at DFARS 227.7202-3, therefore the rights set forth herein shall apply. For any other Government unit or agency: The Government shall have only the rights specified in this Agreement under which the Program as commercial computer software and the Documentation as commercial computer software documentation were obtained, as set forth in FAR 12.212. When FAR clause 52.227-19 applies, the Government’s rights include those set forth in paragraph (b)(2) of that clause, except that under no condition does this license extend to the source code of the Program or otherwise obligate us to modify the Program or Documentation for the Government. Where the Program as commercial computer software and the Documentation as commercial computer software documentation are licensed to the Government under a contract that includes FAR clause 52.227-19 or similar, the following Notice is incorporated herein:

NOTICE—Notwithstanding this license agreement that may pertain to, or accompany the delivery of, this computer software (the Program) and computer software documentation (the Documentation), the rights of the government regarding its use, reproduction, and disclosure are as set forth in clause 52.227-19(b)(2) of the Government Contract under which it was acquired.

If You are acquiring this license pursuant to work You are doing under a US Government contract, You agree that You will provide the government with the necessary disclosures, notices, and restricted rights legends, and take any other necessary steps, to ensure that the rights granted with respect to the Program is no broader than as set forth herein.

- k. Protection and Confidentiality of Our Information. You acknowledge that the Program contain trade secrets and other valuable and confidential information of us and our licensors, and You shall not act, or fail to act, in any way or manner to intentionally or negligently harm our or our licensors’ rights in our or their respective intellectual property in the Program and Documentation. The Program, together with any other information learned in connection therewith that should reasonably be considered confidential under the circumstances, are “Confidential Information”. You shall disclose Confidential Information of ours and our licensors only on a need-to-know basis to Your employees; You may not disclose any Confidential Information of ours and our licensors to a third party; and You shall use all reasonable care to keep the Confidential Information of ours and our licensors confidential consistent with the grant of Your licensed rights. You acknowledge and agree that unless agreed to by Aquanty in writing, Aquanty

shall have no obligation to You or any other party to protect the confidentiality and security of any of Your information.

1. Program Results. You are responsible for the accuracy and completeness of all information, data or other items entered or used by You in connection with use the Program (“Your Data”) and for any errors in and with respect to information, data or other items resulting from any inaccuracies or incompleteness of any of Your Data. YOU ACKNOWLEDGE AND AGREE THAT AQUANTY SHALL HAVE NO LIABILITY TO YOU OR ANY OTHER PARTY WITH RESPECT TO ANY RESULTS FROM, OR WORK PRODUCTS GENERATED BY, YOUR USE OF THE PROGRAM.
- m. Submissions. To the extent You suggest any improvements to the Program or suggest any new product or service offerings, including ideas, concepts, proposals, or other materials in connection therewith (collectively, “Submissions”): (i) You represent and warrant that, to the best of Your knowledge, such Submissions do not infringe any intellectual property rights of any third party; (ii) You acknowledge that we may use such Submissions but are under no obligation to do so; (iii) You grant to us a non-exclusive, irrevocable, world-wide license to reproduce, distribute, transmit, publicly display, publicly perform, modify, translate, make derivative works based on, manufacture, make, market, sell, offer to sell and/or otherwise use such Submissions and derivative works based thereon, in whole or in part, including, without limitation, by incorporating such Submissions, in whole or in part, within our Program and/ or other Program, and occurring in or through any media now existing or existing at any time in the future, and to grant sublicenses to engage in the foregoing activities; (iv) You waive any right or claim to additional consideration for such Submissions beyond our review of Your Submissions and the rights You receive under the this Agreement (including any claim for payment or other compensation); and (v) You waive any moral rights in connection with any use we may make of such Submissions.
4. Delivery. We may deliver the Program and Documentation to You in archival over the Internet with installation materials which specify the Program. You shall be responsible for all use of Your installation materials, authorized or not, and You shall not disclose the archive installation materials or allow them to be used except for use as expressly permitted herein.
5. Compliance with Export Laws. The Program is subject to Canadian, and U.S. or other governmental export and import laws and regulations (“Export Laws”). Notwithstanding any other term of this Agreement or any other agreement, neither You nor any third party may exercise any of Your rights under this Agreement in violation of any Export Law, nor may this Agreement be transferred to any party where doing so would result in such a violation. The terms of any limitation on the use, transfer or re-export of the Program imposed by us in any document for the purpose of export control shall prevail over any of the terms and conditions in this Agreement, but it shall be Your responsibility to comply with the latest Export Law.
6. Maintenance and upgrades. The purchase of a license for the Program includes the provision of Maintenance Services for a period of twelve months from the effective date of the Order Form expire automatically, unless prior to such expiry date You may obtain Maintenance Services by entering into a separate Maintenance Agreement with Aquanty. The purchase of a license for the Program does not include the provision of any other support services from Us. Support services may be obtained and provided by Aquanty pursuant to the terms of a separate agreement to be entered into between You and Us.
7. Disclaimer of Warranties.
 - a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE PROGRAM IS PROVIDED “AS IS” WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AQUANTY, ITS AFFILIATES, DEALERS, RESELLERS OR DISTRIBUTORS, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. YOU ASSUME THE ENTIRE RISK AS TO THE USE AND PERFORMANCE OF THE PROGRAM OR DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE.

- b. Aquanty does not warrant that the Program will meet Your requirements, be error free, or operate without interruptions. You acknowledge that the Program operates in an environment that includes software and hardware of third party vendors and that Aquanty does not control the products of third party vendors. You further acknowledge that You are possessed with sufficient knowledge with respect to Your operations and have relied upon Your own skill and judgment in selecting and licensing the Program. You further acknowledges that the Program is not fault-tolerant and is not designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments requiring fail safe performance in which the failure of the Program could lead directly to death, personal injury, or severe physical or environmental damage (“High Risk Activities”). ACCORDINGLY, AQUANTY, LICENSORS AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. YOU AGREE THAT AQUANTY AND ITS SUPPLIERS AND LICENSORS WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM THE USE OF THE PROGRAM IN SUCH APPLICATIONS.
8. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL WE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE PROGRAM, THE DOCUMENTATION OR THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DAMAGES FROM THIRD PARTY CLAIMS, LOSS OF PROFITS, DATA, INVASION OF PRIVACY, FAILURE TO MEET ANY DUTY SUCH AS GOOD FAITH OR REASONABLE CARE, NEGLIGENCE, OR ANY OTHER LOSS, EVEN IF WE OR THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, MAXIMUM LIABILITY HEREUNDER, REGARDLESS OF ANY ACT OR OMISSION OF OURS OR ANYONE UNDER OUR DIRECTION OR CONTROL, SHALL NOT IN TOTAL EXCEED THE AGGREGATE AMOUNT PAID BY YOU TO US IN THE SIX-MONTH PERIOD PRECEDING YOUR CLAIM(S), AND FOR SUCH PURPOSES, ALL CLAIMS SHALL BE AGGREGATED. The remedies against us are exclusive and are in lieu of any other remedies at law or in equity. The fees and limitations of liability and remedies for the license to the Program reflect the allocation of risk between the parties. This section is an essential element of the basis of the bargain between the parties.
9. Indemnification. You agree to indemnify, defend, and hold harmless us and our parents, subsidiaries, affiliates, successors, distributors, and resellers, and each of our and their officers, directors, employees and representatives, against and from any and all actions, claims, demands, costs, liabilities, losses, expenses (including reasonable attorneys’ fees and court costs, whether incurred as the result of: (i) any breach of this Agreement by You; and/or (ii) any third party claim or a claim to enforce this provision) and other damages (collectively, “Losses”) arising out of or in connection with any and all third party claims relating to any use of the Program by You and any act or omission of Yours, including third party claims related to Your activities pursuant to this Agreement, except to the extent we indemnify You as described below. If You are a governmental user in a jurisdiction which limits Your ability to enter into indemnification agreements, then the foregoing indemnification obligation shall apply only to the extent permitted by applicable law.
10. Prevailing Party. If any legal action or other proceeding is brought for any breach of this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and other costs incurred in bringing such action or proceeding, in addition to any other relief to which such party may be entitled.
11. Taxes. You shall be liable for any taxes (except those on our net income) due in connection with this Agreement.
12. Termination. We may terminate this Agreement by written notice to You if You breach any of the terms and conditions of this Agreement and have not cured such breach within twenty (20) days (within ten (10) days if the breach is for non-payment) thereafter. You may terminate this Agreement at any time for any reason, but You shall not be entitled to any refund except for license fees paid for any Program for which the Acceptance Period has not expired at the time we receive Your notice of termination.
13. Effect of Termination. Immediately upon termination of this Agreement for any reason, (a) Your rights shall cease and all rights granted herein shall automatically revert to us; (b) You shall stop using the

- Program and Documentation; (c) You shall erase all copies of Program and Documentation from Your computers and deliver to us all tangible copies of the Program and Documentation; (d) You shall pay all amounts due us; and (e) You shall take such acts and execute all documents we reasonably request to register or effect the termination. Within five (5) business days of the termination, You shall provide us with a written declaration signed under penalty of perjury by You attesting to compliance with the provisions of items (b), (c) and (d) above. Expiration or termination of this Agreement shall not relieve a party of obligations accrued before such event. In addition, Sections 3(b), 3(i), 3 (k), 3(l) 3(m), 7, 8, 9, 16 and 17 of this Agreement shall survive termination or expiration of this Agreement.
14. Assignment and Transfer. We may freely assign this Agreement. You may not assign or otherwise transfer this Agreement and its rights and obligations, in whole or in part, by operation of law or otherwise.
 15. Revised Terms and Conditions. We may revise the terms and conditions of this Agreement from time to time. Revisions are applicable to the version of the Program with which such revisions are delivered and are effective upon installation of such version.
 16. Miscellaneous. You shall not grant any ownership right or security interest in the Program to any person. A breach of any provision of this Agreement may only be waived in writing and the waiver of such breach shall not operate or be construed as a waiver of any subsequent breach. If any of the terms and conditions of this Agreement should, for any reason, be held invalid or unenforceable in any respect, the remainder of this Agreement shall be enforced to the full extent permitted by law. A court of competent jurisdiction is hereby empowered to modify the invalid or unenforceable provision to make it valid and enforceable. This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties irrevocably attorns to the exclusive jurisdiction of the courts of the province of Ontario without regard to conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (also called the Vienna Convention, and which is cited in the statutes of Canada as the *International Sale of Goods Contracts Convention Act*) will not apply to this Agreement. To the extent permitted by law, You hereby waive any sovereign immunity that You would otherwise be entitled to assert with respect to any claim arising out of or relating to this Agreement.
 17. Entire Agreement. This Agreement and the applicable Addenda hereto (if relevant) contain the entire understanding of the parties with respect to the subject matter, and supersedes all prior, contemporaneous, and subsequent proposals, agreements, representations, and understandings. This Agreement may not be changed except as provided herein in a writing signed by You and us. No purchase order or any other standardized business form issued by You, and even if such purchase order or other standardized business form provides that it takes precedence over any other agreement between the parties, shall be effective to contradict, modify, add to or delete from the terms of this Agreement in any manner whatsoever. Any acknowledgment, in any form, of any such purchase order or standardized business form is not recognized as a subsequent writing and will not act as acceptance of such terms.



Academic Addendum

This is an Addendum to the Aquanty Software License Agreement (the “Agreement”), and the terms and conditions of this Addendum are incorporated therein. Each capitalized term used but not defined herein shall have the meaning ascribed to it in the Agreement.

Program licensed to degree-granting educational institutions (“Institutions”) at our educational rates (“Academic Prices”) are subject to separate license provisions and are further restricted to use in connection with on-campus computing facilities that are used solely in support of classroom instruction and research activities of the Institution’s students and faculty. The right to use the Program licensed at Academic Prices for commercial, governmental, or contract work purposes is expressly prohibited. Academic Prices are offered by us at our sole discretion and we reserve the right to review eligibility from time to time.

1. General Scope. In addition to the terms and conditions in the Agreement, the provisions of this Academic Addendum apply to the Program at prices offered only to Institutions.
2. Academic Internal Operations. The license to the Program purchased at Academic Prices give the Licensee the right to use the software in Academic research as well as teaching at the licensed Institution. Moreover, a student working on a thesis or a diploma has the right to use the Program purchased at Academic Prices outside the Institution as long as the usage is restricted to the thesis or the diploma work. If there is a conflict between the terms in this Addendum and the Agreement, the Addendum provisions shall control.