



GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (these “**General Terms**”), published at <https://aquitysolutions.com/contract-templates/>, apply to any order form, purchase order, statement of work, change order, work request, end user agreement, and similar arrangement (such documents together with these General Terms are hereinafter referred to as an “**Agreement**”) entered into by Aquity Solutions, LLC and/or its Affiliates (hereinafter referred to as “**Aquity**”) and any purchaser of goods or services or licensee of software from Aquity (hereinafter referred to as “**Customer**”). These General Terms prevail over any Customer general terms and conditions regardless whether or when Customer has submitted its order form, purchase order, statement of work, change order, work request, end user agreement or similar document. Fulfillment of any Agreement does not constitute acceptance of any Customer terms and conditions and does not serve to modify or amend these General Terms unless expressly agreed to in writing by Aquity. Aquity and Customer may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

1 DEFINITIONS. The following terms when used with capital letters shall have the corresponding definitions:

1.1 “Access Credentials” means any user name, identification number, password, license or security key, security token, PIN or other security code, used alone or in combination to verify an individual's identity and authorization to access and use the Services.

1.2 “Affiliate” means, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such person or entity. “**Control**” means the possession of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of equity interests, voting power or voting control, or by contract. Without limiting the generality of the foregoing, the holding of fifty percent (50%) or more of the equity interests of an entity, fifty percent (50%) or more of the voting power of an entity, or the voting control of an entity shall be deemed Control.

1.3 “Aquity Materials” means the Aquity Systems and any other information, data, documents, materials, works, content, devices, tools, methods, processes, know-how, and other technologies and inventions possessed by Aquity prior to the commencement of or independent of Aquity's delivery of the Services, or acquired, developed, or used by Aquity in the performance of Services (other than Customer Confidential Information and Customer Systems), and any modifications, enhancements and derivative works thereof, regardless of who or how created, and all Intellectual Property Rights attendant thereto.

1.4 “Aquity Systems” means the information technology infrastructure, including all computers, software, hardware, databases, electronic systems and networks, whether operated directly by Aquity or through third-party services, used by Aquity in providing Services.

1.5 “Authorized User” means each of the individuals employed or engaged by Customer at a Facility with appropriate Access Credentials to the Services.

1.6 “Claims” means any civil, criminal, administrative, regulatory or investigative action or proceeding commenced or threatened by a third party, including, without limitation, governmental authorities and regulatory agencies, however described or denominated.

1.7 “Clinical Data” means the clinical information, in any form or medium, obtained by Aquity from Customer Systems or input into Aquity Systems by an Authorized User in connection with an Agreement. Clinical Data is Customer Confidential Information.

1.8 “Confidential Information” means business or technical information disclosed by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), in any form or medium, tangible or intangible, in connection with an Agreement and (a) is designated either in writing or orally as confidential at or within a reasonable time after such disclosure, (b) by the nature of the circumstances surrounding such disclosure would, in good faith, reasonably be expected to be treated as confidential information of the Disclosing Party, whether or not such information is identified as such by the Disclosing Party, or (c) has commercial value or other utility in the business or prospective business of the Disclosing Party. Confidential Information shall not include information that: (a) is shown by written documentation to already have been in the possession of, or known to, the Receiving Party prior to disclosure and prior to such Receiving Party having an obligation of confidentiality with respect to such Confidential Information, in each case provided that, to the extent such Confidential

Information was obtained by the Receiving Party from a third party, such third party did not commit a breach of an obligation of confidence with respect to such Confidential Information, or (b) becomes publicly available through no fault or breach of the Receiving Party. Without limiting the foregoing, the Parties expressly agree that the terms and conditions of an Agreement constitute Confidential Information.

1.9 “Customer Systems” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through third-party services.

1.10 “Deliverables” means the draft medical text, documents, notes and reports produced from the Services, created for and delivered to Customer under an Agreement.

1.11 “Facility” means any Customer location where Services are provided.

1.12 “Intellectual Property Rights” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets and know-how, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.13 “Losses” means all out-of-pocket judgments, settlements, awards, charges, liabilities, penalties, fines, interest, damages, losses, injuries, and out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and external costs of investigations, litigation, hearings, proceedings, document and data productions), however described or denominated, and in each instance whether (a) granted or awarded to or ordered to be paid to a third party or assessed, levied or ordered to be paid by a governmental authority or regulatory agency or (b) incurred, suffered, paid or lost.

1.14 “Privacy Laws” means collectively the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated thereunder (“**HITECH**”), and any similar state laws and the regulations promulgated thereunder (“**State Privacy Law**”).

1.15 “Professional Services” means any implementation and training services provided by Aquity set forth in a Statement of Work (“**SOW**”). The SOW shall include the following details, if applicable: a project overview including project milestones and estimated timetables, a list of Facilities, hardware and software recommendations, assumptions and risks, an implementation plan summary, and key personnel contact information.

1.16 “Services” means any professional, support, or outsourced labor services provided by Aquity to Customer pursuant to an Agreement.

2 SERVICES. Aquity will perform the Services in accordance with an Agreement.

3 PAYMENT. Customer shall pay all properly invoiced amounts due within thirty (30) days after date of such invoice, except for any amounts disputed by Customer in good faith. All payments shall be in US dollars and made by check, ACH debit, or wire transfer. In the

event payments are not received after becoming due, Aquity may (a) charge interest on any unpaid amounts at a rate of 1.5% per month or, if lower, the maximum amount permitted under law, and (b) suspend performance for Services until payment has been made. In the event of a payment dispute, Customer shall deliver a written statement to Aquity no later than the date payment is due providing a reasonably detailed description of each disputed item. Amounts not so disputed shall be deemed accepted and shall be paid, notwithstanding disputes on other items. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; *provided that*, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Aquity's income, revenues, gross receipts, personnel or real or personal property.

4 TERMINATION. Either Party may terminate an Agreement upon written notice to the other Party (the "**Breaching Party**") if the Breaching Party is in breach of any provision of an Agreement and such breach materially and adversely affects the rights or benefits of the non-Breaching Party and the Breaching Party has failed to cure such breach within thirty (30) days after receiving written notice from the non-Breaching Party reasonably describing such breach. Termination or expiration of an Agreement shall not be construed to limit a Party's remedies for breach and is without prejudice to the enforcement of any undischarged obligations existing at the time of termination or expiration.

5 PRIVACY REQUIREMENTS. The Parties shall negotiate in good faith mutually acceptable terms and conditions related to requirements imposed in connection with individually identifiable health information under Privacy Laws, and shall set forth such terms and conditions within a Business Associate Agreement (the "**BAA**"). To the extent any provision in these General Terms is directly contradictory to one or more provisions of any Privacy Law or the BAA, such provisions of the Privacy Law and/or the BAA, as applicable, shall have priority of interpretation.

6 CONFIDENTIALITY.

6.1 Non-Disclosure and Use of Confidential Information: Each Party shall hold and maintain in strictest confidence the Confidential Information of the other Party. Without limiting the generality of the foregoing statement, absent written consent of the Disclosing Party: (a) the Receiving Party shall provide the Disclosing Party's Confidential Information only to those employees, officers, directors, advisors, and contractors who have a legitimate "need to know" as reasonably necessary to perform such Party's respective obligations and exercise its rights under an Agreement and who are bound by obligations of confidentiality at least as restrictive as those set forth in an Agreement; (b) the Receiving Party shall only use the Disclosing Party's Confidential Information through its employees, officers, directors, advisors and contractors as reasonably necessary to perform its respective obligations or as otherwise permitted under an Agreement or by law; (c) the Receiving Party shall not disclose the Disclosing Party's Confidential Information to any third party except as permitted herein; (d) the Receiving Party shall protect the confidentiality of the Confidential Information furnished by the Disclosing Party with at least the same degree of care the Receiving Party uses to safeguard its own proprietary information including storing the Disclosing Party's Confidential Information in a secure location; and (e) upon termination or expiration of an Agreement, or upon the written request of the Disclosing Party, unless compliance with such requirement would contravene terms or conditions in an Agreement or any legal obligation of the Receiving Party, the Receiving Party shall promptly destroy all documents and other tangible objects containing Confidential Information previously furnished by the Disclosing Party, along with all copies thereof. The obligations regarding Confidential Information imposed hereunder shall survive the termination or expiration of an Agreement.

6.2 Ownership of Confidential Information: The Parties expressly acknowledge that, at all times, each Disclosing Party retains any and all right, title and interest in and to its own Confidential Information, subject only to those provisions herein that expressly provide otherwise.

6.3 Lawful Order: In the event the Receiving Party is requested or required to disclose Confidential Information of the Disclosing Party pursuant to the order of a court, written request of a regulatory authority with jurisdiction over the Receiving Party, or otherwise required by law, the Receiving Party shall promptly provide the Disclosing Party with written notification of any such request or requirement to allow the Disclosing Party to seek a protective order or other appropriate remedy, or waive compliance with these General Terms. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party is nonetheless, in the opinion of counsel, legally compelled to disclose Confidential Information, the Receiving Party may, without liability under these General Terms, disclose only that portion of the Confidential Information to such court or regulatory authority that is legally required to be disclosed, provided that the Receiving Party exercises reasonable efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the Disclosing Party at the Disclosing Party's expense to obtain an appropriate protective order or other assurance that confidential treatment will be accorded the Confidential Information by such court or regulatory authority.

6.4 Investor Disclosures: Notwithstanding the above, Aquity shall have the right to provide the terms of an Agreement to present or future providers of venture capital and/or or potential private investors in or acquirers of Aquity provided such individuals or entities agree in writing to obligations of confidentiality relative to Customer's Confidential Information that are substantially similar to those that Aquity is bound under the terms and conditions of these General Terms.

7 INTELLECTUAL PROPERTY

7.1 General: Except for the limited license(s) granted herein, all right, title and interest in and to Aquity Materials are retained by Aquity or its licensors. Absent the prior, written consent of Aquity, neither Customer nor any Authorized User shall alter or remove any trademark, copyright, trade secret, patent, proprietary or other legal notice or legend contained in or on copies thereof. Customer shall make reasonable efforts to protect Aquity Materials from unauthorized use. Nothing in this Agreement restricts Aquity from using the general ideas, concepts, settings, or suggestions made by Customer or Authorized Users to Aquity related to the Aquity Materials. Customer assigns to Aquity its entire right, title and interest in and to any Intellectual Property Rights that Customer may now or hereafter have in or relating to Aquity Materials (including any rights in derivative works or improvements), whether held or acquired by operation of law, an Agreement, assignment or otherwise.

7.2 License Grant: Customer is granted a license in Aquity Materials to the extent necessary for Customer's receipt and use of the Deliverables. The licenses granted to Customer in Aquity Materials under an Agreement (a) are non-exclusive, non-transferable, and revocable to the extent provided in an Agreement; and (b) extend to Customer and its Authorized Users to access and use Aquity Materials in the United States solely for Customer's internal business purposes during the Term set forth in an Agreement.

7.3 License Restrictions: Without expanding the limited license grant herein, Customer and Authorized Users shall not (a) disassemble, decompile, reverse compile or reverse engineer Aquity Materials, or take any action in order to derive a source code equivalent of Aquity Materials, (b) incorporate, bundle or pre-load any portion of Aquity Materials into any software or computing device of Customer except as expressly set forth in this Agreement, (c) copy, modify or create derivative works of Aquity Materials, (d) sublicense Aquity Materials or any portion thereof to a third party, or otherwise permit use of Aquity Materials including, without limitation, timesharing or networking use by any third party, except as expressly set forth in an Agreement, (e) link, combine or use Aquity Materials with any open source software without the written permission of Aquity if such linkage, combination or use would create a risk, or have the "viral" effect, of disclosing or

licensing source code or rendering any patent associated with Aquity Materials unenforceable under the GNU General Public License or under the terms of any other open source license applicable thereto.

7.4 **Continuous Improvement:** Customer acknowledges and agrees that Aquity or its licensors may use, compile (including creating statistical or other models), and analyze Clinical Data (a) for quality assurance purposes; and (b) to improve or modify Aquity Materials.

7.5 **Clinical Data and Deliverables:** Except for the limited purpose of performing Services, and except for the limited license(s) granted herein or under an Agreement, all right, title and interest in and to Clinical Data is retained by Customer. Upon full payment to Aquity, and except to the extent Deliverables include any Aquity Materials or Aquity Confidential Information, Aquity hereby assigns to Customer all Intellectual Property Rights in and to the Deliverables, whether held or acquired by operation of law, an Agreement, assignment or otherwise. Customer is responsible for making and maintaining its own backup copies of any Clinical Data and Deliverables.

8 **DISCLAIMERS. OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN AN AGREEMENT, AQUITY MAKES NO FURTHER OR ADDITIONAL WARRANTIES IN CONNECTION WITH ANY PURCHASE, LICENSE OR SALE OF SERVICES OR AQUITY MATERIALS. AQUITY DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.** In no event shall Customer be entitled to duplicate compensation or remedies with respect to any claims under or any breach of a representation, warranty, covenant, or service level asserted under the terms of an Agreement, even if such claim or breach may be addressed by more than one provision of this Agreement.

9 **CUSTOMER ACKNOWLEDGEMENTS.** Customer and any person or entity receiving Services shall (a) use the Services and Aquity Materials consistent with an Agreement; (b) comply with all applicable laws and regulations, including export and import laws, in connection with receipt of Services; (c) be responsible for the accuracy and legality of information provided to Aquity; and (d) be responsible for identifying errors in the Deliverables before relying on such results. Customer further acknowledges that Aquity may make changes to the Services determined reasonably necessary by Aquity so long as such changes do not materially decrease the functionality of such Services.

10 **LIMITATION OF LIABILITY. IN NO EVENT SHALL AQUITY BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR LOSS OF DATA) IN ANY WAY ARISING OUT OF AN AGREEMENT, OR PERFORMANCE THEREUNDER, HOWEVER CAUSED, UNDER A CLAIM OF ANY TYPE, BASED ON ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT OR STRICT LIABILITY) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL AQUITY'S CUMULATIVE LIABILITY EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE PRICING AND IS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.**

11 **INDEMNIFICATION.** Aquity shall defend Customer, its directors, officers and employees ("**Customer Indemnitees**") from and against any Claims and indemnify Customer Indemnitees from and against any Losses to the extent Customer's use of Aquity Materials in accordance with an Agreement infringes a United States Intellectual Property Right of such third party ("**Infringement Claim**"). Aquity shall have no obligation to indemnify and defend Customer Indemnitees to the extent (a) the Infringement Claim is based on use of any modification of the Aquity Materials made by or on behalf of Customer by any entity other than Aquity if such Infringement Claim would have been avoided by use of only the Aquity Materials as delivered by Aquity to Customer; (b) the Infringement Claim would have been avoided but for the combination, operation, or use of the Aquity Materials with devices, parts or software not supplied by Aquity; or (c) Customer's failure to

give Aquity timely notification of and cooperation with said Claim and such failure materially prejudices Aquity's ability to defend the Claim.

12 **FORCE MAJEURE.** Neither Party shall be liable to the other for failure or delay in performance of its obligations hereunder due to causes beyond its reasonable control including, but not limited to, acts of God or public enemy, fires, floods, storms, tornadoes, earthquakes, riots, strikes, acts of terrorism, war or war operations, restraints of government, government acts, or acts or omissions of the other Party. Both Parties agree to extend the time period for the performance of any delayed obligations by the length of the period of interruption, but not to exceed thirty (30) days.

13 **RELATIONSHIP OF THE PARTIES.** The relationship between Customer and Aquity is that of independent contractor and nothing contained in an Agreement shall establish or create a relationship of principal and agent, franchisor and franchisee, joint ventures or partnership between them. Aquity's employees are not and shall not be deemed to be employees of Customer. Aquity shall be solely responsible for the payment of all compensation to its employees, including provisions for workmen's compensation, employment taxes and any similar taxes associated with employment of Aquity's personnel. Neither Party nor any of its agents or employees will have any right or authority to assume or create any obligations of any kind, whether express or implied, on behalf of the other Party. Aquity is a global company and may utilize any of its resources to fulfill its obligations under an Agreement unless expressly limited therein.

14 **ASSIGNMENT.** Neither Party shall assign, sell, transfer, or otherwise dispose of any of the rights, privileges, or interests granted herein or under an Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other Party, and any attempt to do so shall be null and void and of no effect; *provided, however,* that a Party may assign or transfer an Agreement to any successor-in-interest without the consent of the other Party so long as the successor-in-interest agrees in writing to be bound or is bound by operation of law to the Agreement.

15 **NO THIRD PARTY BENEFICIARIES.** An Agreement is for the sole benefit of the Parties thereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of an Agreement.

16 **PUBLICITY.** Neither Party shall issue any announcement, statement, press release or other publicity or marketing materials relating to an Agreement or otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, without the prior written consent of the other Party; *provided however,* that Aquity may include Customer's name and/or other indicia in its lists of Aquity's customers in promotional and marketing materials.