

**SERVICE TERMS AND CONDITIONS**  
**for the**  
**AQUEDUCT SERVICE**

These Service Terms and Conditions (the "Agreement") are entered into between Aqueduct ("Aqueduct") and you, the person or entity that has submitted an online application to use Aqueduct's services ("You" or "Customer"), and apply to and govern your access to and use of the online, hosted software-as-a-service developed, owned and operated by Aqueduct, as described below.

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICE. THIS AGREEMENT CONSTITUTES A LEGALLY BINDING CONTRACT BETWEEN AQUEDUCT AND YOU. BY CHECKING A BOX INDICATING THAT YOU ACCEPT THIS AGREEMENT, OR BY ACCESSING OR USING THE SERVICE, YOU CONFIRM THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE, YOU MAY NOT ACCESS OR USE THE SERVICE.**

Aqueduct's online service (the "Service") is offered for use in tracking online sales transactions, preparing and filing state sales tax returns, remitting payment of state sales taxes and related services and includes, without limitation, the Website (defined below), API (defined below), software, applications, tools, databases and documentation used in providing the Service, and all updates, modifications and additions to the foregoing. The Service is accessible through the designated website owned and operated by or on behalf of Aqueduct (the "Website"), and Aqueduct provides an application programming interface and related software to enable your systems to interoperate with the Service (the "API").

**1. License and Conditions to the Use of the Service.**

Upon Aqueduct's acceptance of your application to use the Service, and subject to the terms and conditions of this Agreement, Aqueduct grants You a limited, non-exclusive, non-transferable, non-sublicensable, license to access and use the Service for the Term (defined below) solely for the uses described in the definition of the Service.

By accessing or using the Service, You acknowledge that You have determined that the Service is suitable for your business requirements. You warrant and represent that you will use the Service solely for your internal business purposes and that You will not use the Service for any other purpose or allow any third party to access or use the Service. You specifically agree not to sell, lease, outsource or rent access to the Service or otherwise transfer or sub-license any rights to access or use the Service.

This Agreement, and your right to access and use the Service, shall commence upon Aqueduct's acceptance of your application to use the Service and be effective for the subscription period You select in your online application, including any auto-renewals of the subscription period pursuant to the online application terms or as otherwise agreed to in writing between the parties, unless terminated sooner pursuant to Section 10 hereof (the "Term").

Your right to access and use of the Service is conditioned upon your payment of the fees and charges, and is limited to the number of transactions, that apply to the service level that You select in your online application or that have been otherwise mutually agreed in writing with Aqueduct.

**2. Customer's Obligations in Using the Service.**

2.1 Customer's Compliance Responsibilities You are responsible for using the Service in meeting your business needs and satisfying your legal obligations relating to sales tax tracking, reporting and payments.

Aqueduct does not provide, directly or through the Service, tax, accounting, legal or other professional advice, and You acknowledge that You will not rely on the Service for any such professional advice or guidance. More generally, You remain solely responsible for compliance with all applicable laws and regulations relating to all aspects of your business and for compliance with all financial reporting and tax filings and payments relating to your business.

2.2 API and Equipment Requirements. In order to utilize the Service, You must establish and maintain integration with the Service by using Aqueduct's API (including any related software made available in object code by Aqueduct). You are responsible for obtaining and maintaining any equipment and services needed to connect to, access and use the Service, including, without limitation, modems, hardware, software, operating system, networking, web servers and telecommunications services, and ensuring that such equipment and services are compatible with the Service and the API and comply with all configurations and specifications provided by Aqueduct.

2.3 Account Access and Security. Aqueduct will provide You with a unique user identification (user ID) that You will use, together with passwords that You select, to enable your authorized employees, contractors and agents ("Authorized Users") to gain access to your account with the Service. You are fully responsible for compliance by each Authorized User with this Agreement and for all of their activities in connection with the Service. You are responsible for maintaining the confidentiality of your user ID and passwords and shall not allow any unauthorized third party to have access to or use your user ID and passwords. You shall immediately notify Aqueduct if your user ID or password is lost, stolen or otherwise compromised or if You become aware of any unauthorized attempts to gain access to the Service. You acknowledge that You are responsible for all activities that occur through your account with the Service and for all costs, fees, liabilities or damages incurred thereby. Aqueduct may require you to change your user ID and/or password(s) in its sole discretion.

2.4 Customer Data Submission. You acknowledge and agree that You are responsible for uploading, delivering or otherwise transmitting to the Service on a timely basis all data and information regarding your business ("Customer Data") that are necessary for the Service to prepare and submit accurately and completely all requisite Filings (defined below). You are solely responsible for the accuracy and completeness all Customer Data that You provide to the Service and acknowledge that Aqueduct is not responsible for verifying your Customer Data. Aqueduct shall not be responsible for any filing or payment errors, delays, fees or other issues that may arise from inaccurate or missing Customer Data or for your failure or delay in providing Customer Data. You retain ownership of all such Customer Data that You provide. Aqueduct may store and use Customer Data in accordance with this Agreement, but Aqueduct shall not be responsible for any loss of or inability to recover any Customer Data.

2.5 Accessing Customer Data from Third Parties. If a third party maintains Customer Data on your behalf which is necessary for the performance of the Service, You may authorize Aqueduct to take all necessary and appropriate steps to access your account with such third party to obtain such Customer Data by providing Aqueduct with the requisite usernames, passwords, or other log-in information to enable Aqueduct to access such account. By providing such log-in information to Aqueduct, (i) You represent that You are entitled to authorize Aqueduct to access your account with such third party and obtain the necessary Customer Data from such account and that Aqueduct will not incur any fees or any other obligations to such third party in doing so; and (ii) You acknowledge and agree that Aqueduct acts solely as your agent and attorney-in-fact in using such log-in information to access such account with the third party and retrieve Customer Data held in such account.

2.6 Use of the Filing Service. You may use the Service to prepare and submit all required reports, filings, registrations, postings or other documents (each a "Filing") with the relevant state tax authorities

(each a “Tax Authority”). By using the Service to prepare and submit your Filings, You agree to provide Aqueduct with all necessary information for it to make the Filings on your behalf, and You consent to Aqueduct’s disclosure to the relevant Tax Authority of all information required by the Tax Authority, including personally identifiable information, relating to your use of the Service. You are solely responsible for confirming if and when each Filing is required and will review all Filings prior to submission by the Service to the applicable Tax Authority to confirm their accuracy and completeness. If necessary, You shall provide Aqueduct with any corrections needed to make the Filing accurate and complete prior to the time specified by Aqueduct for submitting the Filing. When a Filing is submitted to and accepted by a Tax Authority, the Service will provide You with an image of the notification, if any, it receives from the Tax Authority indicating its acceptance of the Filing, including a confirmation number, if provided. You are responsible for confirming the accuracy of any such notification or for confirming the status of the Filing if no notification is received. You acknowledge and agree that Aqueduct will not be responsible for any failure or delay in submitting any Filing or for any inaccurate or incomplete Filing resulting from your failure to provide the necessary filing information or to ensure that the Filing is accurate and complete in all respects or to otherwise comply with the terms of this Agreement.

2.7 Use of the Payment Remittance Service. You may use the Service to remit sales taxes and other related fees and charges (the “Payments”) to the relevant Tax Authorities. By using the Service to remit your Payments, You consent to Aqueduct obtaining all necessary funds from your Payment Account (defined below) for making Payments, and You shall provide Aqueduct on a timely basis with all necessary information and credentials to enable it to withdraw such funds from your Payment Account and to remit the Payments to the relevant Tax Authorities. You may elect to have Aqueduct make the Payments by either check or electronic funds transfer, and in either case, Aqueduct is authorized to remit the required Payments directly from your Payment Account or to transfer the necessary funds from your Payment Account to a bank account controlled by Aqueduct and make the required Payments from that account. You also authorize Aqueduct to aggregate funds for Payments from your Payment Account with funds of its other customers in order to make combined payments to the relevant Tax Authorities.

You will designate a bank account from which your funds will be withdrawn in order to make Payments through the Service (“Payment Account”). You are responsible for depositing and maintaining sufficient funds in your Payment Account to meet your Payment obligations in accordance with the payment deadlines notified to You through the Service. Aqueduct will not be responsible for providing any funds to make Payments on your behalf and shall not be obligated to confirm that your Payment Account contains sufficient funds to make any Payment. In the event that your Payment Account does not contain sufficient funds to make any Payment, Aqueduct shall be relieved of any responsibility to submit that Payment or any related Filing to the relevant Tax Authority until sufficient funds are available in the Payment Account. Alternatively, You may instruct Aqueduct not to submit any specific Filing and/or Payment to a Tax Authority, provided You do so prior to the deadline specified by the Service for submitting such Filing or Payment. In either case, You will be solely responsible for making the required Filings and/or Payments directly to the relevant Tax Authority, and Aqueduct will not be responsible for any penalties, fines, or other liabilities arising from the failure to submit any such Filing or Payment by the applicable deadline.

2.8 Use of Aqueduct Data. Aqueduct may make available to You through the Service, using the API, certain information (“Aqueduct Data”) that may assist You in using the Service, and You may access and use such Aqueduct Data solely in connection with your use of the Service. While Aqueduct will use reasonable efforts to provide Aqueduct Data that is accurate and up-to-date, Aqueduct does not warrant that Aqueduct Data is accurate, complete or up-to-date. In addition, Aqueduct Data is subject to change without notice. You are responsible for verifying the accuracy and completeness of any Aqueduct Data,

and Aqueduct disclaims any responsibility or liability arising any errors, omissions or changes in Aqueduct Data or from any reliance you place upon Aqueduct Data. Aqueduct retains full ownership rights in and to all Aqueduct Data.

2.9 Restrictions on Use. Customer shall not directly or indirectly, or permit any third party, to: (i) resell, sublicense, lease, time-share, outsource or otherwise make all or any part of the Service or the Aqueduct Data available to any third party; (ii) attempt to gain unauthorized access to, or disrupt, unduly burden, corrupt or impair the stability or performance of, the Service or any data contained therein; (iii) use any robot, spider, or other automated process to scrape, crawl, or index the Service or any data contained therein or to send an unreasonable amount of request messages; (iv) modify, copy or create derivative works based on the Service; (v) decompile, disassemble, reverse engineer any part of the Service or otherwise attempt to derive source code or underlying technical information from the Service; (vi) access the Service or Aqueduct Data for the purpose of building a competitive product or service or copying its features, functionality or user interface; (vii) disclose to any third party the results of any product evaluation, benchmarking or other comparative analysis involving the Service without Aqueduct's prior written consent; or (viii) in connection with the use of the Service: (1) infringe the intellectual property rights or privacy rights of any third party; (2) violate any law, ordinance, or regulation; or (3) propagate any virus, worms, Trojan horse, malware, spyware or other programming routine intended to damage or gain unauthorized access to any system or data.

### **3. Additional Terms Pertaining to the Service.**

3.1 Changes to the Service. Aqueduct reserves the right, in its sole discretion and without incurring any liability to you, (a) to update, improve, replace, modify or discontinue all or any part of the Service at any time, but is not obligated to do so, and/or (b) to impose limitations on your usage of the Service. If you object to any such changes, your sole recourse will be to cease to use of the Service. Continued access to the Service following notice of any such changes will indicate your acknowledgement of such changes and satisfaction with the Service.

3.2 Suspension of the Service. Without limiting Aqueduct's termination rights in Section 11, Aqueduct shall have the right to suspend or limit your access to and use of the Service, including the API, without notice and without liability based on its reasonable suspicion that your use of the Service is in violation of applicable law, is in breach of Section 2.9 or is causing, or is reasonably likely to cause, damage to or claims against Aqueduct or material degradation of the Service or interference with the ability of other customers to access or use of the Service. Any such suspension will end only when Aqueduct determines in its sole discretion that You have corrected the offending activity or conduct.

3.3 Personal Information. If, in the course of providing Customer Data to the Service, You provide Aqueduct with any personally identifiable information as defined and protected by applicable privacy laws ("Personal Information"), You represent that You have full authority to provide such Personal Information to Aqueduct and to permit Aqueduct to receive, transmit, store or use such Personal for the purpose of performing the Service as requested by You. Aqueduct will implement and maintain industry standard administrative, physical, and technical safeguards to protect such Personal Data from unauthorized access, use, modification, or disclosure. Aqueduct will access, use or disclose such Personal Information solely for the business purpose for which You provided it, provided that Aqueduct may disclose such Personal Information to any Tax Authority that may require it or to ensure compliance with any applicable legal or regulatory requirement or judicial process.

3.4 Activity Monitoring and Analysis. Aqueduct may monitor your use of the Service. This monitoring may include the general tracking of your activity on the Service (the "Activity Data"). Aqueduct may utilize

data capture and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze Activity Data and any non-personally identifiable data or information, including Customer Data, resulting from your use of the Service. To the extent that any Activity Data is collected by Aqueduct, such Activity Data will be solely owned by Aqueduct and may be used by Aqueduct for any lawful purpose, provided that the Activity Data will be disclosed to third parties only in an anonymized and aggregated form and in a manner that does not permit the identification of You and is compliant with with Section 10 hereof.

3.5 Third Party Services. The Service may contain, or contain links to, third-party owned services or content. Aqueduct does not own or control or accept responsibility for those third-party services or content, including their privacy policies or practices. You should read the terms of use agreements and privacy policies that apply to any such third-party services and content.

#### **4. Intellectual Property Rights.**

4.1 Aqueduct IP. Aqueduct owns all rights, title and interest in and to the Website, the Service, the API, Aqueduct Data and all of their content, features and functionality, including all additions and modifications thereto, as well as all software, trademarks, logos, trade dress and URLs used in connection with the Service, the API and the Website (collectively, "Aqueduct IP"), all of which are protected by various laws including, without limitation, copyright, trademark, trade secrecy and other intellectual property laws. No right, title or interest in or to any of the Aqueduct IP is transferred to You, except for the limited license to use the Service granted herein, and all rights not expressly granted to You in this Agreement are reserved by Aqueduct. Any use of the Service or any other Aqueduct IP not expressly permitted by this Agreement is a breach of Agreement and may also violate copyright, trademark and other laws. You shall not alter or remove any copyright, trademark or other proprietary designations or notices that are contained in or on any Aqueduct IP. If You suggest or request new content, features or functionality that Aqueduct, in its sole discretion, incorporates in the Service, such new content, features or functionality will be the sole and exclusive property of Aqueduct, and you hereby waive and release all rights and claims to the same.

4.2 Customer IP. You retain all ownership rights in and to all Customer Data and Customer Confidential Information that You provide in connection with your use of the Service.

#### **5. Fees and Payment.**

5.1 Fees and charges for Customer's use of the Service will be based on the service level selected by Customer in its online application, as set forth on Aqueduct's Website or otherwise provided in writing to Customer. Aqueduct may adjust its fees at any time by posting the change on the Website, and the revised fees will be effective at the beginning of the next monthly billing period. The applicable fees will be payable in U.S. Dollars on a monthly basis unless otherwise agreed in writing by both parties. Fees and accrued charges for each monthly billing period will be due and payable on the first day of each billing period. You hereby authorize Aqueduct to charge amounts when due, plus applicable taxes, to your specified credit card account. Customer shall provide in its online application its current, complete and accurate billing and contact information, including all necessary credit card information and shall promptly notify Aqueduct of any changes in any such information. All payment obligations shall be paid without set-off, counterclaim or deduction, and all amounts paid are non-refundable.

5.2 Aqueduct's fees, as set forth in its fee schedule, do not include, and Customer shall pay, any sales, use, value-added or other applicable taxes relating to or based on Customer's purchase or use of the Service. If Aqueduct is required to pay any of the foregoing taxes, then such taxes shall be billed to and promptly paid by Customer. If Aqueduct has not received payment of an undisputed amount by the

applicable due date, then without limiting any other right or remedy available to Aqueduct, Aqueduct shall have the right to charge a late fee on the overdue amount until paid in full at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. Customer shall pay Aqueduct's costs of collecting overdue amounts, including Aqueduct's reasonable attorneys' fees and court costs.

## **6. Representations and Warranties.**

Customer represents, warrants, and covenants to Aqueduct that: (i) it has the legal power to enter into this Agreement and to perform its obligations hereunder, and (ii) it shall comply with all applicable laws and regulations in its performance hereunder including all laws and regulations applicable to its access to and use of the Service; (iii) it has obtained and will maintain all permissions, licenses and rights required for the filing or submission of all Filings and Payments that are required to be prepared and/or submitted in connection with the Services; (iv) its use of the Service will not cause Aqueduct to violate any applicable Law; (v) all Customer Data provided by Customer in using the Service will be current, accurate and complete when it is provided; and (vi) Customer has and will maintain all rights and consents necessary to allow Aqueduct to store, use, process, and share all Customer Data for purposes of providing the Services.

## **7. Disclaimer of Warranties.**

AQUEDUCT MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICE, AND YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. THE SERVICE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY OR ACCURACY OF THE SERVICE OR THAT THE SERVICE WILL MEET YOUR NEEDS OR ENSURE YOUR COMPLIANCE WITH ANY LAWS OR REGULATIONS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AQUEDUCT DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY LAW ANY AND ALL (A) WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE SERVICE FOR A PARTICULAR PURPOSE, OR ITS TIMELINESS, NON-INFRINGEMENT OR UNINTERRUPTED USE, (B) WARRANTIES RELATING TO THE ACCURACY, RELIABILITY, CORRECTNESS, COMPLETENESS OR RESULTS OF THE SERVICE OR ANY DATA MADE AVAILABLE BY OR THROUGH THE SERVICE, (C) WARRANTIES THAT THE SERVICE OR THE DATA PROVIDED BY IT WILL BE FREE FROM ERROR, OMISSION, BUGS, DEFECTS OR VIRUSES, OR THAT ANY SUCH ERRORS, OMISSIONS, BUGS, DEFECTS OR VIRUSES WILL BE CORRECTED; AND (D) WARRANTIES RELATING TO THE PERFORMANCE, NONPERFORMANCE, OR OTHER ACTS OR OMISSIONS, BY AQUEDUCT.

AQUEDUCT DISCLAIMS ANY RESPONSIBILITY FOR DELAYS, DELIVERY FAILURES OR LOSS OR DAMAGE TO DATA IN TRANSMITTING FILINGS OR PAYMENTS OR OTHER TRANSMISSIONS OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND YOU ACKNOWLEDGE THAT THE SERVICE MAY BE SUBJECT TO DELAYS, LOSSES OR OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.

To the extent that Aqueduct is not permitted by the laws of some states to exclude or limit certain warranties, then the foregoing disclaimers of warranties shall be deemed to exclude or limit such warranties only to the extent permitted by applicable law.

## **8. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AQUEDUCT OR ITS AFFILIATES, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT,

SPECIAL, OR PUNITIVE DAMAGES OR PENALTIES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, PROFITS OR GOODWILL OR LOSS OR CORRUPTION OF DATA, ARISING OUT OF YOUR ACCESS, USE, MISUSE, OR INABILITY TO USE THE SERVICE OR ANY DATA PROVIDED BY THE SERVICE, OR RESULTING FROM ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, COMPUTER VIRUS, SYSTEM FAILURE OR FAILURE OR DELAY IN PREPARING OR FILING A TAX RETURN, EVEN IF AQUEDUCT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE. IN NO EVENT SHALL THE TOTAL COLLECTIVE LIABILITY OF AQUEDUCT, ITS AFFILIATES, EMPLOYEES AND AGENTS FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OF THE SERVICE, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EXCEED THE AMOUNT PAID BY YOU TO AQUEDUCT FOR THE SERVICES IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM.

BOTH PARTIES ACKNOWLEDGE AND AGREE THAT THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BARGAIN BETWEEN THE PARTIES UPON WHICH AQUEDUCT'S PRICING IS BASED. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

## **9. Indemnification.**

You agree to defend, indemnify and hold harmless Aqueduct and its affiliates, officers, employees, contractors and agents, from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising from or based on (i) your breach of your representations or obligations under this Agreement, (ii) your use of the Service or any Service Data other than as expressly authorized in this Agreement, or (iii) any incorrect, incomplete or misleading Customer Data that you provide to Aqueduct, or authorize Aqueduct to obtain from a third party, in connection with the Service. Aqueduct will provide You with notice of any such claim and reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this Section. In such case, You agree to cooperate with any of Aqueduct's reasonable requests for assistance in defense of such matter.

## **10. Confidential Information.**

10.1 Confidential Information. As used herein, "Confidential Information" shall mean all information, whether in written, electronic, oral or other form, disclosed or made available by a party (the "Disclosing Party") to the other party (the "Receiving Party") that (a) is identified as confidential by the Disclosing Party at time of disclosure, or (b) a reasonable person would consider to be confidential and/or proprietary, and includes without limitation, product information, pricing information, financial information, financial projections, business plans, marketing plans, employee, customer, or vendor information and methodologies, software, technology and data, together with notes, analyses, work papers, studies or other documents prepared by the Receiving Party which contain or are based on or generated from such Confidential Information. Confidential Information does not include information that the Receiving Party can show through demonstrable evidence (i) is now or later becomes generally known by the public through no act of the Receiving Party, (ii) was rightfully in the possession of the Receiving Party free of any obligation of confidence prior to the disclosure by the Disclosing Party; (iii) was rightfully received by the Receiving Party from a third party authorized to make such disclosure and without breach of any obligation of confidence; or (iv) was independently developed by the Receiving Party without reference to or reliance upon Confidential Information.

10.2. Confidentiality Obligations. The Receiving Party shall (i) treat all Confidential Information as strictly confidential, (ii) protect the Confidential Information with the same degree of care and confidentiality that the Receiving Party affords its own confidential information, and in no event with less than a reasonable degree of care, (iii) use or reproduce Confidential Information for any purpose except as necessary to perform its obligations or exercise its rights under this Agreement and (iv) not disclose the Confidential Information to any person or entity or to any employees, contractors, consultants or agents, except to those who need to know the Confidential Information in order to perform their duties in connection with this Agreement and who are subject to a confidentiality obligations substantially similar to the terms of this Agreement. The Receiving Party shall be responsible and liable to the Disclosing Party for any disclosure to or use by any person to whom disclosure of Confidential Information is made. In the event the Receiving Party becomes legally compelled to disclose Confidential Information pursuant to an order of court or governmental entity, to the extent legally permitted, the Receiving Party shall promptly notify the Disclosing Party of such requirement, cooperate with the Disclosing Party and afford the Disclosing Party the opportunity to seek a protective order relating to such disclosure. In the event such protective order or other remedy is not obtained, the Receiving Party shall furnish only that information which is legally required to be disclosed and will use its reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

10.3 Remedies. You acknowledge and agree that Aqueduct's Confidential Information constitutes valuable trade secrets and proprietary information of Aqueduct, and that any actual or threatened unauthorized disclosure or use of Aqueduct Confidential Information, or breach of the scope of the license to use the Service granted hereunder, shall constitute immediate, irreparable harm to Aqueduct for which monetary damages would be an inadequate remedy, and Aqueduct shall be entitled to seek injunctive relief or other equitable remedy from a court of competent jurisdiction for any such breach in addition to whatever remedies Aqueduct might have at law or under this Agreement.

10.4 Survival. The foregoing provisions of this Section 10 shall survive for a period of five (5) years following termination or expiration of this Agreement.

## **11. Termination.**

11.1. Expiration. This Agreement and the Service will terminate automatically upon the expiration of subscription period that you select in your online application and any auto-renewal thereof that occurs prior to your cancellation of the Service or upon the expiration of any other subscription period that has been agreed to in writing by both parties.

11.2 Defaults. Aqueduct may terminate this Agreement and the Service with immediate effect if Customer fails to pay any amount due to Aqueduct on the applicable due date and remains in default for ten (10) days after being notified in writing by Aqueduct of such payment default. In addition, either party may terminate this Agreement with immediate effect by giving written notice to the other party:

(a) if the other party breaches a material obligation under this Agreement that has not been cured (if curable) within thirty (30) days after written notice specifying such breach is given to such other party; or

(b) in the event of (i) the dissolution, termination of existence, liquidation or insolvency of the other party, (ii) the appointment of a custodian, receiver or trustee for the other party or a substantial portion of its assets, (iii) the institution by or against the other party of any proceeding under the United States Bankruptcy Code or any other foreign, federal or state bankruptcy,



receivership, insolvency or other similar law affecting the rights of creditors generally, or (iv) the making by the other party of a general assignment for the benefit of its creditors.

11.3. Effects of Termination. Upon expiration or termination of this Agreement, the license and rights granted to Customer herein shall terminate and its access to and use of the Service will terminate, and, upon Aqueduct's request, Customer shall promptly return or destroy all Aqueduct Confidential Information, including any API content, and have an officer of the Customer confirm in writing that the same has been done. Upon Customer's request, Aqueduct shall retrieve and deliver to Customer a copy of Customer Data in Aqueduct's possession in commonly used machine-readable format; provided that if such request is not received by Aqueduct within sixty (60) days following termination or expiration of the Agreement, Aqueduct may permanently delete any Customer Data in its possession. Termination or expiration of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties which have accrued up to the date of termination or expiration. If Aqueduct terminates Customer's use of Service pursuant to Section 11.2, Customer shall not be entitled to a refund of any portion of the fees or payments (if any) that it paid for the Service, and shall remain obligated to pay the remainder of any unpaid portion of the fees that it agreed to pay for the Service.

11.4 Survival. In the event of the termination or expiration of this Agreement, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive, including but not limited to this Section 11 and Sections 4, 7, 8, 9, 10 and 12.

## **12. GENERAL**

12.1 Independent Contractors. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby, except as otherwise expressly stated herein. In providing the Service to Customer, Aqueduct does not assume any fiduciary obligations to Customer. Each party shall be solely responsible for all payroll and employment-related expenses and taxes related to its own employees.

12.2 Notices. All notices given under this Agreement will be in writing and delivered by hand or by electronic mail or sent by a nationally recognized express courier or delivery service with delivery to be made within 48 hours to the address of Customer as specified in its online application and to the address of Aqueduct as specified on the Website, or as otherwise notified in writing to the other party. Such notices will be deemed to have been received by the addressee upon confirmed receipt, but in no event later than 48 hours after having been sent.

12.3 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform its obligations hereunder, except for a party's payment obligations, due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks. The affected Party shall notify the other Party of such event and use reasonable efforts to resume performance of its obligations as soon as possible.

12.4 Export Restrictions. Each party agrees to comply with all applicable regulations of the United States Department of Commerce and the United States Department of Treasury Office of Foreign Asset Controls, and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions, with respect to the exportation or importation or use of the Service or anything related thereto.

12.5 Assignment. Customer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Aqueduct, and any assignment in violation thereof shall be void. Aqueduct may assign or delegate this Agreement or any of its rights or obligations hereunder without restriction.

12.6 Governing Law and Jurisdiction. This Agreement, and any dispute or claim arising from or related to it or to the Service, will be governed by construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Each party hereby expressly and irrevocably agrees that any controversy, claim or dispute arising under or relating to this Agreement or the Service shall be brought and decided in the state or federal courts located in the Commonwealth of Virginia and waives any objections on grounds of forum non-conveniens, venue or personal jurisdiction to any such proceedings. THE PARTIES IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING.

12.7 Waiver. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the waiver is to be asserted. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect.

12.9 Amendments. Aqueduct may modify or amend this Agreement at any time by providing notice to You by email or by posting the notice on the Website. Such amendment or modification shall take effect thirty (30) days after such notice is given. Your continued use of the Service following such notice period shall confirm your acceptance of such amendment or modification. If You do not agree with the Agreement as so revised, You must discontinue accessing and using the Service. Your access and use of the Service at any time shall be subject to the then current version of this Agreement. You shall also comply with any notices or policies emailed to you or posted on the Website by Aqueduct relating to the Service.

12.10 No Third Party Beneficiaries. This Agreement does not confer any right or benefit on any person who is not a party to it and no one other than a party to this Agreement, or their successors and permitted assignees, shall have any right to enforce any of the terms of this Agreement.

12.11 Headings; Language. All headings used herein are for convenience of reference only and will not in any way affect the interpretation hereof. The English language version of this Agreement controls.

12.12 Publicity. Customer agrees that Aqueduct may include Customer's company name and logo in Aqueduct's customer lists on its website and marketing materials.

12.13 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, proposals or understandings, written or oral, concerning the subject matter hereof. Aqueduct expressly objects to any additional or conflicting terms or conditions proposed by Customer in any Customer application, purchase order, acknowledgement or otherwise, and none of those terms or conditions will be binding on Aqueduct.

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