

# THREATQUOTIENT, INC.

## END USER LICENSE AGREEMENT

### **IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY.**

THIS END USER LICENSE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND THREATQUOTIENT, INC. ("TQ"). THE TERMS AND CONDITIONS UNDER WHICH YOU MAY USE THE LICENSED MATERIALS ARE SET FORTH IN THIS END USER LICENSE AGREEMENT ("EULA"), IN ADDITION TO ANY OTHER TERMS AS MAY BE SET FORTH IN ANY SUPPLEMENTAL LICENSE AGREEMENT(S) WHICH MAY ACCOMPANY ANY TQ PRODUCTS (TOGETHER WITH THE EULA, THE "AGREEMENT"). BY DOWNLOADING, INSTALLING AND USING ANY OF THE TQ PRODUCTS, YOU ARE BINDING YOURSELF AND THE BUSINESS ENTITY THAT YOU REPRESENT (COLLECTIVELY, "YOU") TO THIS AGREEMENT AND AGREEING THAT THIS AGREEMENT WITH TQ IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU.

IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT, THEN TQ IS UNWILLING TO LICENSE THE LICENSED MATERIALS TO YOU, IN WHICH CASE YOU MAY NOT DOWNLOAD, INSTALL OR USE ANY OF THE LICENSED MATERIALS.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT INITIATE USE OF THE PRODUCT. BY SELECTING "I ACCEPT," "OK," "CONTINUE," "YES," "NEXT" OR BY INSTALLING OR USING THE LICENSED MATERIALS IN ANY WAY, YOU ARE INDICATING YOUR COMPLETE UNDERSTANDING AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE PRODUCT.

This Agreement governs Your access and use of the TQ Products, except to the extent there is a separate written agreement signed by both You and TQ that expressly states that it governs Your use of the TQ Products. In the event of a conflict between the provisions of such a written agreement and this Agreement, the order of precedence shall be (1) the separate signed agreement, and (2) this Agreement.

### **1. DEFINITIONS**

The following capitalized terms shall have the following meanings in this Agreement:

1.1. "Appliance" means any TQ-branded appliance made available to You, consisting of Hardware and pre-installed TQ Software and/or other Licensed Materials.

1.2. "Documentation" means written information contained in user manuals and technical specifications pertaining to the use of the TQ Products made available by TQ with the TQ Products in any manner (including on CD-ROM, or on-line).

1.3 "Effective Date" means the date designated as such on the applicable Order Form.

1.4. "Hardware" means the hardware components of any Appliance on which TQ Software is installed and runs.

1.5. "Laws" means, collectively, all international and national laws, treaties, statutes, ordinances, regulations and other types of government authority.

1.6. "Licensed Materials" means any TQ Software and Documentation licensed by TQ to You hereunder.

1.7. "Order Form" means TQ's standard order form or, if agreed by TQ in writing, Your purchase order containing the same information as TQ's order form and executed by TQ.

1.8. "Party" or "Parties" means, individually each party hereto, and collectively all the parties to this Agreement.

1.9. "Products" means the TQ Products and/or the Third Party Products.

1.10. "Reseller" means an authorized reseller or distributor of TQ.

1.11. "Third Party Products" means any products or other materials made available to You for use with TQ Products and which are not TQ Products.

1.12. "TQ Products" means the Appliance(s) and/or Licensed Materials.

1.13. "TQ Software" means the machine-readable computer software programs licensed by TQ to You hereunder including any software provided to You for use on a subscription, term, perpetual or software-as-a-services (SaaS) basis, and all applicable Updates to any of the foregoing, and any original works of authorship fixed in any tangible medium of expression, now known or later developed, that are created by TQ under this Agreement for You or at Your direction, including without limitation routines, protocols, tools, code, interface extensions, and scripts, and all copyrights and proprietary rights relating thereto.

1.14. "Updates" means with respect to Licensed Materials any TQ-approved periodic patches, bug-fixes, work-arounds, error corrections, enhancements, and additions and other modifications thereto, or revised versions thereof, which may be made available from time to time.

Unless otherwise defined herein, the capitalized terms used in this Agreement shall be defined in the context in which they are used. This Agreement relates to and governs Your use of TQ Products and TQ Software. Except as the context otherwise requires, references herein to this "Agreement" shall mean collectively this Agreement, each Order Form accepted in writing by TQ from You, and any applicable exhibits. All Order Forms shall be governed by, subject to, and construed in accordance with this Agreement. In the event of a conflict between the provisions of this Agreement and any Order Form, the provisions of this Agreement shall control, except to the extent that any such Order Form specifically provides that such Order Form is intended to supersede the applicable provisions of this Agreement.

## **2. YOUR PAYMENT OBLIGATIONS**

You agree to pay to TQ all of the recurring and one-time fees set forth on each Order Form. In the absence of specific payment terms on an Order Form, You will be required to pay for all TQ Products and TQ Software annually in advance and any set-up, implementation or training fees will be payable immediately upon the Order Form's Effective Date. Unless otherwise specified in an Order Form: (i) all fees are based on the TQ Products and TQ Software subscribed for and are not tied to or contingent on actual usage of any TQ Products or TQ Software; and (ii) all fees are non-refundable and may not be cancelled or rescinded by You. Interest on Your balances that are outstanding over thirty (30) days will, at TQ's sole option, accrue at the lesser rate of (i) one and one half percent (1.5%) per month, or (ii) the highest rate of interest allowable under applicable law. You will be solely and exclusively responsible for and will pay directly (or reimburse TQ for), all sales taxes, use taxes, duties, assessments and other governmental charges, however designated, by reason of the performance by TQ of its obligations hereunder, it being understood and agreed that TQ's sole responsibility for governmental charges or taxes in respect of this Agreement will be for taxes directly levied on TQ by any applicable taxing authority in respect of TQ's income, property, and employees. If TQ determines that it has a legal obligation to collect or remit any taxes for which You are responsible, then appropriate amounts will be invoiced to and paid by You unless You have delivered a current, valid tax exemption certificate therefor authorized by the applicable taxing authority.

## **3. LICENSE GRANT**

Subject to the terms and conditions of this Agreement, TQ grants to You a limited, non-exclusive and non-transferable (and, if so identified on the applicable Order Form, perpetual) license to download, install and use for Your internal operations the Licensed Materials for which You have paid the required fees to TQ or a Reseller, as applicable. Such Licensed Materials may be delivered to You pre-installed on an Appliance, made available to You separately via download by TQ or otherwise made available on a subscription, term or software-as-a-service (SaaS) basis. In order to use the Products, You may be required to input a registration number, product authorization key or otherwise register Your Products online at TQ's designated website to obtain the necessary license key or license file. You shall own the Appliance that You purchase and the magnetic or other physical media upon which the Licensed Materials are originally or subsequently recorded or fixed, but TQ and TQ's licensors, as applicable, retain all title, copyright and other intellectual proprietary rights in, and ownership of, the Licensed Materials regardless of the media upon which the original or any copy may be recorded or fixed. You may make one (1) copy of the Licensed

Materials solely for internal backup purposes. TQ and its licensors expressly reserve any rights in Licensed Materials not granted herein.

#### **4. SCOPE OF USE**

Your use of such TQ Products may not exceed the applicable number of licenses purchased and other limitations associated with the fees paid or payable by You for such use. If You purchased a license to use the Licensed Materials on a subscription or term basis, You may not deploy or use such Licensed Materials in a manner that exceeds the term of subscription, the permitted number of users, server size or connections, or other subscription or term limitations associated with the applicable fees paid or payable by You.

#### **5. LICENSE RESTRICTIONS**

You agree not to directly or indirectly: (i) sell, lease, rent, distribute, sublicense, assign or transfer any of the Licensed Materials; (ii) reverse engineer, decompile, disassemble, decrypt or otherwise attempt to determine the source code of any of the Licensed Materials, except to the limited extent permitted by law; (iii) modify, make error corrections to or create derivative works based on the Licensed Materials; (iv) use any Licensed Materials for the benefit of any third parties (e.g., in an ASP, SaaS, outsourcing or service bureau relationship), or in any way other than in its intended manner, except as otherwise permitted by TQ; (v) publish, broadcast, circulate or otherwise disseminate any material based on or referencing the Products or Licensed Materials without the express prior written consent of TQ; (vi) remove, alter or obscure any proprietary or copyright notice, labels, or marks on the Hardware or within the Licensed Materials; (vii) disable or circumvent any access control or related security measure, process or procedure established with respect to the Appliance or any Licensed Materials or any other part thereof; or (viii) use the Products in any manner that violates applicable law or the rights of any third party, including, without limitation, third parties with which You have a commercial or contractual relationship.

You are responsible for all use of the Products obtained by You and for compliance with this Agreement; any breach of this Agreement by You or other users in connection with the use of those Products obtained by You shall be deemed to have been made by You.

#### **6. INTELLECTUAL PROPERTY; TITLE**

This Agreement does not transfer to You any title or any ownership right or interest in any Licensed Materials or in any other intellectual property rights of TQ or TQ's licensors. You acknowledge that the Licensed Materials contain, embody and are based upon patented or patentable inventions, trade secrets, copyrights and other intellectual property rights owned by TQ and its licensors. If You purchased an Appliance, title and risk of loss to each Appliance transfers to You when the Appliance is delivered to TQ's designated carrier for shipment; Products are shipped FOB TQ's designated shipping facility. If You purchased an Appliance from a Reseller, the terms of such purchase are between You and such Reseller. If You purchased an Appliance directly from TQ, the terms of such purchase are as set forth in the TQ sales order submitted by You and accepted by TQ. In all instances, Licensed Materials are licensed to You pursuant to this Agreement and not sold to You.

#### **7. TECHNICAL SUPPORT AND UPDATES**

7.1. No customer support, maintenance or Updates are included with any perpetual license of TQ Products. TQ Product support programs for perpetual licenses (including Updates as available), a description of which may be found at <http://support.threatq.com/> is available for separate purchase and enrollment.

7.2 TQ's standard customer support plan and maintenance (including Updates as available) (as the same may be amended by TQ from time to time, the "Support Plan") is included with each term license of TQ Products. Your rights and TQ's obligations under the Support Plan are set forth in the Support Plan terms and conditions, a current copy of which is located at <http://support.threatq.com/>. All Updates received by You pursuant to the Support Plan shall be governed by, and licensed to You under, this Agreement.

## **8. CONFIDENTIALITY**

As used herein, "Confidential Information" means any non-public technical or business information of either Party, including without limitation, the terms and conditions of this Agreement, any information relating to TQ's techniques, algorithms, software, know-how and current or future product designs, financial information, procurement requirements, and manufacturing or business forecasts. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (ii) the receiving party can demonstrate by written evidence was rightfully in the receiving party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of or access to the disclosing party's Confidential Information or otherwise in breach of this Agreement; (iv) the receiving party rightfully obtains from a third party not under a duty of confidentiality and without restriction on use or disclosure; or (v) is required to be disclosed pursuant to, or by, any Laws, court order or other legal process to do so, provided that the receiving party shall, promptly upon learning that such disclosure is required, give written notice of such disclosure to the disclosing party. The party receiving Confidential Information will employ all reasonable measures to maintain the confidentiality of such Confidential Information, but in no event shall such measures be less than the measures the receiving party employs to protect its own confidential information. The party receiving the Confidential Information will limit the disclosure of the other party's Confidential Information to its employees and contractors with a bona fide need to access such Confidential Information in order to exercise its rights and obligations under this Agreement; provided that, all such employees and contractors are bound by a written non-disclosure agreement that contains restrictions at least as protective as those set forth herein. The Parties agree that the party disclosing Confidential Information will suffer irreparable harm in the event that the receiving party breaches any obligation under this Section 8 and that monetary damages will be inadequate to compensate the non-breaching party for such breach. In the event of a breach, or threatened breach, of any of the provisions of this Section 8, the non-breaching party, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to seek a temporary restraining order, preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach.

## **9. INSTALLATION**

Except to the extent that TQ performs the installation of the Appliance or the Licensed Materials, You are solely responsible for the proper installation, configuration and management of the Licensed Materials, the Appliance, and Your separate hardware on which the Licensed Materials will be installed.

## **10. WARRANTY AND DISCLAIMER**

TQ warrants that, for a period of thirty (30) days from the date the TQ Software is made available to You for download or delivered on a fixed media (as the case may be, the "Warranty Period"), the unmodified TQ Software will, under normal use, substantially perform the functions described in its Documentation, and that the unmodified Hardware will, under normal use, be free of substantial defects in materials and workmanship. The foregoing warranty does not apply if the TQ Software or Hardware (i) has been altered, except by TQ or its authorized representative; (ii) has not been installed, operated, repaired or maintained in accordance with the Documentation and/or instructions supplied by TQ; (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence or accident by You; or (iv) is licensed for beta, evaluation, testing or demonstration purposes. If a court of competent jurisdiction determines that the statutory warranty periods of such jurisdiction apply rather than the Warranty Period referenced above, then such statutory warranty periods will control only in the event of a conflict with the terms of this Section 10.

EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 10, THE TQ PRODUCTS (INCLUDING, ANY EVALUATION AND BETA PRODUCTS), AND ANY OTHER DOCUMENTATION, MATERIALS AND/OR DATA PROVIDED BY TQ ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND TQ EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

THE TQ PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. TQ PRODUCTS ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, PHYSICAL INJURY OR PROPERTY DAMAGE.

NO WARRANTY IS MADE BY TQ ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. TQ DOES NOT WARRANT THAT THE APPLIANCE, THE LICENSED MATERIALS OR ANY OTHER INFORMATION, MATERIALS, DOCUMENTATION OR TECHNOLOGY PROVIDED UNDER THIS AGREEMENT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT TQ'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR YOUR BENEFIT ONLY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER.

TQ's sole obligation and liability, and Your sole and exclusive remedy under the warranties set forth in this [Section 10](#) shall be for TQ to use commercially reasonable efforts to remedy the problem, or to replace the defective Hardware and/or the TQ Software, if TQ is notified in writing of all warranty problems during the applicable warranty period.

#### **11. LIMITATION OF LIABILITY**

IN NO EVENT WILL TQ'S OR ANY OF ITS SUBSIDIARIES' OR AFFILIATES' AGGREGATE LIABILITY (INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION AND OTHER CONTRACT OR TORT CLAIMS) ARISING FROM OR RELATED TO THIS AGREEMENT, OR THE USE OF THE PRODUCTS, EXCEED THE AMOUNT OF FEES YOU PAID TO TQ OR ITS RESELLER, AS APPLICABLE, FOR THE PRODUCTS THAT GAVE RISE TO SUCH LIABILITY; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY WITH RESPECT TO (I) LIABILITY ARISING PURSUANT TO TQ'S BREACH OF ITS OBLIGATIONS UNDER [SECTION 8](#) HEREOF AND (II) TQ'S OBLIGATIONS UNDER [SECTION 13](#) HEREOF. UNDER NO CIRCUMSTANCES SHALL TQ OR ANY OF ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY OF THE FOLLOWING: (I) THIRD PARTY CLAIMS, EXCEPT AS SET FORTH IN [SECTION 13](#); (II) LOSS OR DAMAGE TO ANY SYSTEMS, RECORDS OR DATA; (III) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES (INCLUDING LOST PROFITS AND LOST SAVINGS); OR (IV) DAMAGES ARISING OUT OF ANY THIRD PARTY PRODUCTS, IN EACH CASE EVEN IF TQ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE SECURITY, ACCURACY AND ADEQUACY OF ANY OUTPUT FROM ANY PRODUCTS, AND FOR ANY RELIANCE THEREON. THE LIMITATIONS OF LIABILITY IN THIS [SECTION 11](#) ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

#### **12. ESSENTIAL BASIS**

The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

#### **13. INFRINGEMENT OBLIGATIONS**

13.1. TQ will defend You from any unaffiliated third party claim that Your use of the TQ Software as provided by TQ to You under this Agreement, when used within the scope of this Agreement, infringes any unaffiliated third party's U.S. copyright ("Claim"). TQ's obligations to You under this [Section 13](#) are limited solely to paying (i) counsel hired by TQ to defend the Claim; (ii) the reasonable and verifiable out-of-pocket costs incurred directly by You in connection with defending the Claim and/or assisting TQ in the defense thereof; and (iii) subject to [Section 11](#) herein, any direct damages finally awarded to such third party by a court of competent jurisdiction (after any appeals) or any settlement of the Claim to which TQ consents in writing. TQ's obligations under this [Section 13](#) are expressly contingent upon: (x) You giving prompt written notice to TQ of any such Claim; (y) You allowing TQ exclusive control of the defense and any related settlement of any such Claim; and (z) You furnishing TQ with reasonable assistance in connection with the Claim without prejudicing TQ in any manner. Subject to the foregoing conditions, nothing in this Agreement shall prohibit You from hiring separate counsel, at Your own expense.

13.2. If Your use of the Products hereunder is, or in TQ's opinion is likely to be, enjoined due to the type of Claim specified in Section 13.1, then TQ may, at its sole option and expense but without obligation to do so: (i) procure for You the right to continue to use the Products under the terms of this Agreement; (ii) replace the Products with a functional equivalent; (iii) modify the Products so that they become non-infringing (including disabling the challenged functionality), provided the modified Products remain substantially equivalent in function to the enjoined Products; or (iv) repurchase the affected Products less depreciation at the rate of twenty-five percent (25%) per year, or *pro rata* for the part of the year, from the date of payment to the date of removal of the Products, and terminate the Agreement with respect to those Products. Further, if as a result of a Claim a court of competent jurisdiction issues a final injunction (which has not been appealed) against Your use of any part of the Products, then TQ will, at its sole option, perform one of the remedy options listed in this Section 13.2. In either case, if TQ selects option (ii), (iii) or (iv) listed in this Section 13.2, You shall immediately refrain from use of the allegedly infringing Products.

13.3. TQ shall have no indemnification obligation or liability for any Claim to the extent that it arises out of or relates to: (i) Your use of the Products after TQ notifies You to discontinue use due to a Claim; (ii) the combination of the TQ Products with a non-TQ application, product, data or business process; (iii) damages attributable to a non-TQ application, product, data or business process; (iv) modifications to the Products made other than by TQ; (v) changes made by TQ on behalf of You; (vi) continued use of the Products for which TQ has provided You with modifications or substitute Products if use of such modifications or substitute Products would have prevented the Claim; or (vii) use of the Products in a manner prohibited under this Agreement.

13.4. THE PROVISIONS OF THIS SECTION 13 SET FORTH TQ'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT, VIOLATION OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. IN NO EVENT SHALL TQ'S LIABILITY TO YOU UNDER SECTION 13 EXCEED THE AMOUNT OF THE FEES PAID BY YOU FOR THE TQ PRODUCT THAT IS THE SUBJECT OF SUCH CLAIM.

#### **14. VERIFICATION**

You agree that TQ or its designee shall have the right to periodically conduct on-site audits of Your use of the Products for the purpose of verifying that You are in compliance with Your obligations under this Agreement and have paid all applicable fees. These audits will be conducted during regular business hours, and TQ will make reasonable efforts to minimize interference with Your regular business activities. Alternatively, TQ may request that You complete a self-audit questionnaire in a form provided by TQ. If an audit or such questionnaire reveals unlicensed use of the Products, You agree to promptly order and pay for sufficient licenses to permit all usage disclosed.

#### **15. EXPORT; RE-EXPORT**

The Products are subject to export controls under the Laws of the United States and other countries. You shall comply with all such Laws governing export, re-export, transfer and use of the Products and will obtain all required U.S. and local authorizations, permits and licenses. TQ assumes no responsibility or liability for Your failure to obtain such necessary authorizations, permits and licenses. Information regarding U.S. export laws can be found at [www.bis.doc.gov](http://www.bis.doc.gov). You agree not to use or transfer the Products for any use relating to the operation of nuclear facilities, chemical or biological weapons, or missile technology, unless authorized by the U.S. Government by regulation or specific written license.

#### **16. U.S. GOVERNMENT END USERS**

The Licensed Materials, information and data provided under this Agreement are prepared entirely at private expense and are "Commercial Items" as that term is defined in 48 C.F.R. 2.101. If You are an agency, department, or other entity of the United States Government, or funded in whole or in part by the United States Government, then Your use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.7102-3, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, this commercial product and data are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to all other users pursuant to the TQ's standard end user license agreement. In case of conflict between any of the

FAR and DFARS provisions listed herein and this Agreement, the construction that provides greater limitations on the U.S. Government's rights shall control. For purpose of any public disclosure provision under any federal, state or local law, it is agreed that this commercial product and data are a trade secret and proprietary commercial products and not subject to disclosure.

## **17. FREE SOFTWARE**

Certain open source or other third party software components are integrated and/or redistributed with the TQ Software. You acknowledge and agree that while certain open source code Third Party Products are made available to You hereunder for free for use in combination with the TQ Products, the terms and conditions under which such Third Party Products are being made available to You are as set forth in their respective third party agreements (the "Third Party Agreements"), and that this Agreement in no way supplements or detracts from any term or condition of such Third Party Agreements. TQ is not giving any warranties for these Third Party Products and Your use of these Third Party Products will be subject solely to such Third Party Agreements. In furtherance of the foregoing, You agree to indemnify TQ for losses and damages resulting from Your noncompliance with the respective licenses for such Third Party Products. A listing of these Third Party Products, including the applicable Third Party Agreements and other applicable disclosures is available in upon written request. You may obtain the source code to such open source code software in accordance with the terms of use of the Third Party Agreement(s).

## **18. EVALUATION PRODUCTS**

If You have been provided Products on an evaluation-only basis or beta-release basis (each, "Evaluation Products") to evaluate their suitability for purchase and/or licensing on a for-fee basis (as the case may be, for "Evaluation"), You acknowledge and agree that the evaluation license key(s) for these Evaluation Products will be set with a set expiration date (the "Expiration Date"), pursuant to which upon activation of the Evaluation Products, You may use the Evaluation Products through the Expiration Date (the "Evaluation Period") solely for their Evaluation, and subject to the restrictions set forth in Section 5 hereof. All Evaluation Products are provided to You "AS IS" without warranty or any kind, whether express, implied, statutory, or otherwise, and the limited warranties referenced in [Section 10](#) and the indemnification obligations referenced in [Section 13](#) above will not be applicable to Your use of the Evaluation Products. TQ bears no liability for any damages resulting from use (or attempted use) of the Evaluation Products.

## **19. INFORMATION SHARING**

You may use TQ Products to store and share information obtained from other components in Your infrastructure or from other sources that You may license or subscribe to the use of such data. You are solely responsible for assuring that Your sharing of data is in compliance with the terms of any agreement(s) that You have entered into for permission to share or otherwise use that data.

TQ may engage other companies and individuals to perform functions on its behalf, such as payment processing, order fulfillment, marketing programs and customer service so TQ may share such information with such subcontractors in order to perform these functions, but such subcontractors may not use Your personal information for other purposes, unless You agree.

## **20. GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the State of New York, USA, without regard to choice-of-law rules or principles. You expressly agree with TQ that the U.N. Convention on Contracts for the International Sale of Goods shall not govern this Agreement. You represent that You understand, and You hereby agree to comply with, all requirements of the U.S. Foreign Corrupt Practices Act and all other applicable Laws. Except for instances where equitable relief is permitted under this Agreement, any and all claims, disputes, or controversies arising under, out of, or in connection with this Agreement or the breach thereof (each, a "Dispute") shall be submitted to the chief operating officer (or equivalent) of each Party (or their designee) for a good faith attempt to resolve the Dispute. The position of each Party shall be submitted, and the individuals promptly thereafter shall meet at a neutral site in an attempt to resolve such Dispute.

## **21. ASSIGNMENT**

Subject to the following sentence, neither Party may assign this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement if a majority of such Party's outstanding voting equity is sold to a third party, or if such Party sells all or substantially all of such Party's assets or if such Party otherwise undergoes a change of control, provided, that, in such instance such assignment will not become effective until such Party provides the other Party written notice of such event. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and permitted assigns.

## **22. TERM; TERMINATION**

This Agreement will continue in effect indefinitely, subject to the right of either Party to terminate this Agreement as provided below. With respect to term licenses, the applicable license of the Licensed Materials will commence on the applicable Effective Date and will continue for the subscription term specified in such Order Form. With respect to perpetual licenses, the applicable license of the Licensed Materials will commence on the applicable Effective Date. You agree that unless otherwise specified in an Order Form, the subscription(s) for term-based Licensed Materials covered by such Order Form automatically will renew for successive twelve (12) month periods at the end of the initial subscription term (and the end of each subsequent renewal term) unless either Party gives the other Party written notice of non-renewal at least thirty (30) days prior to the end of the relevant subscription term. Except as otherwise specified in an Order Form or mutually agreed upon written amendment thereto, the fees payable by You during a subsequent renewal term of a term-based license will be based upon the then current published list price. Either Party may terminate this Agreement if the other does not comply with any of its material terms, if the Party who is not complying is given written notice and not less than thirty (30) days to comply. Notwithstanding the foregoing, termination of this Agreement and all then outstanding Order Forms will not relieve You of Your obligations to pay all then-unpaid fees (including, without limitation, fees for the full remaining current term of any subscriptions) under any Order Forms so terminated (or any prior Order Forms for which payment of all fees due from You to TQ has not been made), including for any periods prior to the effective date of termination. Upon termination or expiration of this Agreement for any reason whatsoever, (a) all licenses granted hereunder shall terminate immediately, and (b) You shall (i) cease using, and shall cause all of Your users to cease using TQ Products and TQ Software, and (ii) shall (if applicable), at Your own cost, return or destroy (at TQ's sole option) any TQ Products or TQ Software in Your possession or control; *provided, however*, that You will be entitled to retain at Your sole cost any reports generated prior to the termination or expiration of this Agreement.

## **23. NOTICES**

Any notice will be deemed sufficient if and when personally delivered in writing or if and when given by (i) United States registered or certified mail (postage prepaid, return receipt requested), (ii) prepaid, recognized overnight courier, (iii) confirmed facsimile transmission, or (iv) email, in each case properly addressed to the respective addresses, facsimile numbers, or email addresses of the parties as set forth in the most recent Order Form (or in the case of notices to You, to Your then current corporate, company or other entity headquarters address, facsimile number or email notices address (as applicable) as shown on Your website) or as either party may have notified the other from time to time in accordance with the provisions of this Section 23.

## **24. GENERAL**

This Agreement, the Order Form(s), any exhibits thereto, and the terms and conditions referenced herein and therein are the Parties' complete agreement regarding the subject matter hereof and thereof, superseding any prior oral or written communications. In furtherance and not in limitation of the foregoing, the Parties agree that, to the extent TQ accepts Your purchase order as an Order Form, any terms or conditions of such purchase order that conflict with, or supplement, this Agreement shall be void and have no effect, and the provisions of this Agreement shall control. If any provision of this Agreement is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated to be enforceable to the maximum extent permissible under law, and the remainder of this Agreement shall remain in full force and effect. Neither Party shall be liable for any delay or failure due to a force majeure event and other causes beyond its reasonable control, provided, however, this provision shall not apply to Your payment obligations. Amendments or changes to this Agreement must be in mutually executed writings to be effective. Sections 1-2, 5-6, 8-12 and 14-24, including all warranty disclaimers and use restrictions,



shall survive the termination or expiration of this Agreement. The Parties are independent contractors for all purposes under this Agreement.

--END OF AGREEMENT--