

MANAGED SERVICES PROVIDER AGREEMENT V.201805

This Managed Service Provider Agreement (“Agreement”) is by and between the Liquidware entity identified below (“Liquidware”) and the MSP identified below (“MSP”) and is effective on the date set forth below (“Effective Date”). The parties agree as follows:

The parties desire for MSP to provide Managed Services (defined below) using Liquidware’s software solutions (“Software”) within the territory (“Territory”) identified below to Customers on a nonexclusive basis. In addition, MSP will be permitted to use the Software internally to provide configuration, implementation and consulting services in connection with actual or potential sales.

This Agreement consists of this introduction and the terms and conditions that follow, sets forth the entire agreement and understanding between Liquidware and MSP with respect to the subject matter thereof, and supersedes and merges all prior oral and written agreements, discussions and understandings between Liquidware and MSP with respect to the subject matter hereof. Neither Liquidware nor MSP shall be bound by any conditions, inducements or representations other than as expressly provided for herein. Notwithstanding the foregoing, the Agreement will not supersede the terms of any non-disclosure agreement entered into between Liquidware and MSP unless a written provision of this Agreement refers to the specific non-disclosure agreement that the Agreement supersedes. If the provisions in an Order and this Agreement conflict, the provisions of this Agreement will govern and control to the extent of such conflict, unless a provision in an Order is expressly agreed to by Liquidware, in which case and only to the extent expressly agreed, the Order will govern. The terms of an Order and this Agreement will prevail over any conflicting provision in any purchase order or any other instrument of MSP regardless of execution by Liquidware unless such provision is expressly agreed to by Liquidware. In addition, with respect to any Order of the Software by MSP for its internal use, the terms of this Agreement replace and supersede Liquidware’s standard clickwrap license agreement that accompanies the Software or its download.

TERMS AND CONDITIONS

1. DEFINITIONS. As used in the Agreement, and in addition to any other terms defined herein, the following terms have the following meanings:

“Customer” means a third party end user customer to whom MSP provides Managed Services using the Software pursuant to an Order.

“Documentation” means the Liquidware authored user guides and manuals accompanying the Software and any “Help” files accessible during use of the Software.

“Error” means a substantial failure of a supported version of the Software to perform the material functions described in the Documentation.

“Error Correction” means either a software modification or addition that, when made or added to a supported version, causes the Software to perform the material functions described in the Documentation.

“Managed Services” means MSP’s managed service offering in which MSP provides a Customer with remote-access to the Software along with related implementation and support services.

“Order” means a Liquidware sales order executed between Liquidware and MSP for (a) sale of Managed Services to a Customer, or (b) purchase of a subscription license for MSP’s internal use of the Software under this Agreement.

“Software” means the software licensed under this Agreement as specified in the Order.

“Support Services” means support and maintenance to be provided by Liquidware for the Software pursuant to an Order.

“Term Start Date” means (a) in the case of a license for Managed Services, the date the Customer executes or accepts an order for Software from MSP in accordance with its terms unless a start date is specified in the order, and (b) in the case of a license of Software for MSP’s internal use, the date of execution of the Order unless a start date is specified in the Order.

“Third Party Software” means software that is included in or provided with the Software that is not proprietary to Liquidware and that is identified in the Documentation as third party software.

“User” means the number of named individuals who may use the Software as specified in an Order.

“Update” means a Software release that is (i) generally deemed by Liquidware to be an Error Correction release and generally does not contain new functionality, and (ii) generally provided as part of Support Services for the Software. Updates are typically designated by a change in the digit of the release number to the right of the decimal (i.e., X.1 to X.2).

“Upgrade” means a Software release that (i) contains new functionality and enhancements in addition to Error Corrections, and (ii) is generally provided as part of Support Services for the Software. Upgrades are typically designated by a change in the digit of the release number to the left of the decimal (i.e., 1.X to 2.Y).

2. LICENSE.

2.1. License for Managed Services. Subject to the terms of the Agreement including the payment of applicable fees, Liquidware grants MSP the limited, non-exclusive, nontransferable license during the Term and within the Territory to (a) market and demonstrate the Software to potential Customers for use as part of the Managed Services, and (b) pursuant to an Order, to use the Software to provide Managed Services to a Customer for the subscription term as specified in the Order, and to permit the Customer to access such Software only as part of the Managed Services. Any demonstrations to Customers will be subject to Liquidware’s guidelines and restrictions provided from time to time. Other than for demonstration as permitted above, MSP may not make available the Software to any person except to Customers as part of Managed Services. MSP may only provide the Managed Services and corresponding Software access to Customers directly and not through sub-distributors, other partners, OEM’s, or any other third party. Liquidware will provide to MSP the number of copies of the current version of the Software indicated in an Order to enable MSP to perform its marketing and sales activities.

2.2. Internal Use License. Subject to the terms of the Agreement including the payment of fees, Liquidware grants MSP, the limited, non-exclusive, nontransferable subscription license within the Territory for the subscription term set forth in the Order to (a) use the executable version of the Software for the number of Users set forth in the Order for MSP’s professional services engagements for actual and potential Customers; (b) make a reasonable number of backup copies of the Software as needed for archival use only; and (c) make copies of the Documentation for MSP’s internal use. MSP may not use the Software with more than the authorized number of Users, nor may MSP use internal use licenses to perform Managed Services.

2.3. Third Party Software. The Documentation identifies all Third Party Software. In addition to the terms set forth in this Agreement, the Third Party Software is provided according to the license terms set forth in the Documentation regarding such Third Party Software; if there is a conflict between the license terms for such Third Party Software and this Agreement, the Third Party Software license terms control with respect to such Third Party Software.

2.4. Limitations; Reservation of Rights. Except as expressly set forth in this Section 2, MSP shall not, and shall not permit others to: (i) transfer or sublicense the Software; (ii) provide third parties with access to the Software; (iii) disassemble, reverse engineer or decompile the Software, source code, structure, algorithms or ideas underlying such Software, or cause or permit reverse engineering, disassembly or recompilation of the Software, except and solely to the extent, if any, that applicable law requires that such activities be permitted; (iv) avoid, circumvent or disable any security device, procedure, protocol or mechanism that Liquidware may include, require or establish with respect to the Software; (v) publish or provide the results of any benchmark or comparison tests run using the Software to any third party; or (vi)

modify the Software. Liquidware reserves all rights not expressly granted herein. Except as set forth in the Agreement, no express or implied license or right of any kind is granted to MSP regarding the Software. MSP shall reproduce and include the copyright notices and other proprietary notices on all copies of the Software that MSP is authorized to make.

2.5. Software Utility. The Software contains a utility that allows the Software to collect MSP's name, IP address information of the server on which the Software is operating, and Software usage data; this information is transmitted to Liquidware in the United States. Liquidware uses this information for testing, QA and product and service improvement purposes. MSP can disable the transmission of this information to Liquidware by disabling Internet access for the server on which the Software is operating.

2.6. Restricted Rights. The following applies to all acquisitions of the Software and Documentation by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant or other activity with the U.S. government. The Software and Documentation and services utilizing the Software and Documentation provided under this Agreement are "commercial items" as that term is defined at 48 C.F.R. 2.101 consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and other applicable acquisition regulations and are provided to the U.S. Government only as a commercial item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, all U.S. Government users and licensees acquire the Software and its associated services and Documentation with only those rights and subject to the restrictions set forth in this Agreement. Notwithstanding the foregoing, the Software and its associated services and Documentation may not be acquired by the U.S. government pursuant to a contract incorporating clauses prescribed by FAR Subpart 27.4 or DFARS Subpart 227.4.

3. MARKETING AND SALES.

3.1. Marketing. MSP shall use commercially reasonable efforts to promote and market the Software as part of the Managed Services throughout the Territory, will conduct business in a manner that reflects favorably at all times on the Software and the good name, goodwill and reputation of Liquidware, and not bind Liquidware to any undertaking or performance with respect to the Software. MSP will not make any representation or claim about Liquidware or the Software that is false or misleading or otherwise not contained in Liquidware's current sales literature and Documentation.

3.2. Liquidware Marks. Liquidware grants to MSP during the Term a nonexclusive, nontransferable right to use the trademarks, tradenames and logos provided by Liquidware (the "Marks") in the Territory solely for the purpose of promoting the Software as part of the Managed Services as authorized herein and in accordance with Liquidware's then-current trademark usage guidelines. MSP shall accompany each use of the Marks with a conspicuous notice that the Marks are owned by Liquidware and any other proprietary legend that Liquidware determines necessary to protect its rights. MSP acknowledges that Marks, whether or not registered, belong exclusively to Liquidware. MSP shall not (a) contest or assist anyone in contesting, in any manner, the validity of any Liquidware Marks or their registration(s), (b) register or attempt to obtain an ownership interest in any Mark, or any trademark confusingly similar to any of the Marks, anywhere throughout the world, or (c) otherwise take any actions that will adversely affect Liquidware's rights in the Liquidware Marks.

3.3. Order. MSP will place Orders with MSP for each license for Managed Services it will provide for a Customer and for each license for MSP's internal use. Each Order will indicate, among other things, the Software, the maximum number of Users for which the Software is licensed, whether the license is a perpetual or subscription license, and whether the Software is for internal use or resale. An Order for Managed Services will also include the Customer's name and contact information. Any Order for Managed Services must be for a subscription term no longer than three years unless otherwise agreed to in writing by Liquidware. Any order between a Customer and MSP for Managed Services must be consistent with the corresponding Order between MSP and Liquidware. No Order is valid until executed by Liquidware; Liquidware may elect not to enter into any Order.

3.4. Delivery. Once an Order is executed between Liquidware and MSP, Liquidware shall make available to MSP via electronic download the Software and Documentation ordered. Notwithstanding any provision under a separate Statement of Work which may require Liquidware to perform certain services in the nature of installation of the Software or configuration of MSP's computers, networks or other systems, (a) delivery shall be deemed complete upon delivery of an access key to MSP allowing MSP to download the Software; and (b) MSP is responsible for installation of the Software unless otherwise provided in the Order. Any delivery dates or periods for delivery on an Order are approximate and not a guarantee. Under no circumstances will Liquidware be liable for failure of delivery or delay in delivery, caused in whole or in part by circumstances beyond Liquidware's reasonable control. In such circumstances, MSP is not relieved from accepting delivery and paying the agreed price when the cause interfering with delivery is removed.

3.5. Customer Agreement. Any use of the Software by a Customer as part of the Managed Services is subject to the following conditions:

(a) Customer and MSP must first enter into a written agreement that permits Customer's Users to access the Software remotely as part of the Managed Services and meets the following criteria ("Customer Agreement"):

(i) The license granted in the Customer Agreement may only permit Customer to use the Software remotely as part of the Managed Services for the number of Users indicated in the applicable order.

(ii) The Customer Agreement will contain reservation of rights, disclaimers, limitations of liability and other provisions at least as protective of Liquidware and the Software as those contained in Liquidware's EULA, and the limitations of liability will cover Liquidware, though Liquidware need not be specifically named.

(iii) The Customer Agreement may not impose any obligations or liabilities on Liquidware.

(iv) The Customer Agreement must be consistent with this Agreement and the applicable Order, including without limitation regarding the length of the subscription term.

(b) MSP shall enforce the terms of the Customer Agreements with Customers and shall promptly inform Liquidware of any known material breach of such terms which relate to the Software.

(c) Upon termination of the applicable Order, MSP shall ensure that the Customer no longer may access or use the Software.

3.6. Certification. During the Term MSP must maintain Liquidware certification, as published by Liquidware and subject to change.

4. SUPPORT AND SERVICES.

4.1. Support.

(a) Support Services are provided to MSP pursuant to the then-current Liquidware Customer Support Policy located at <http://www.liquidware.com/content/pdf/documents/support/Liquidware-MSPCustomer-Support-Policy.pdf>, which is subject to change at the discretion of Liquidware. Liquidware's Support Services may include remote diagnostics. Upon Liquidware's request, MSP will implement the necessary hardware, software and telecommunication services reasonably requested by Liquidware to facilitate remote diagnostics and remote installation of Error Corrections, Updates and Upgrades. Support Services do not apply to copies of the Software MSP uses for marketing and demonstration purposes.

(b) MSP is responsible for providing customer support to its Customers. Liquidware's Support Services are limited to MSP, and Liquidware is not obligated to provide Support Services to Customers.

4.2. Professional Services. Professional services performed for MSP ("Services") shall be specified in one or more written statement(s) of work signed by both Liquidware and MSP (a "Statement of Work"). Liquidware or its third party suppliers own all rights, title and interest in any deliverables provided from any Services rendered hereunder and any and all enhancements, suggestions, contributions, modifications or additions that are contributed or added thereto by Liquidware, MSP or others (collectively, the "Deliverables"), including but not limited to all worldwide copyrights, trade secrets, trademark, confidential and proprietary rights therein. Deliverables contain proprietary information belonging to Liquidware and its third party suppliers, and that nothing herein gives MSP any right, title or interest in such Deliverables except as otherwise expressly set forth herein. Notwithstanding the foregoing, Liquidware grants MSP a limited license to use the Deliverables for MSP's internal business purposes during the term of the Agreement.

5. FEES AND PAYMENTS.

5.1. Prices. Prices for use of the Software to provide Managed Services and for MSP's internal use licenses are set forth in Liquidware's then-current price list available upon request. The price list may be revised from time to time upon notice by Liquidware. MSP may determine fees and charges for Customers in its own discretion.

5.2. Support Fees.

(a) Support Services for a perpetual license are offered at Liquidware's then-current fee structure ("Support Fees"). Liquidware offers Support Services on a 12-month cycle that begins on the Term Start Date (each such 12-month cycle being an "Annual Support Term"). At the time of ordering Licensed Software, MSP may elect to lock-in the price for Support Fees under that Order by purchasing Support Services for one or more Annual Support Terms. Except where MSP has pre-paid Support Fees as described above, on or about 45 days prior to commencement of the next Annual Support Term, MSP will be invoiced Support Fees for the Support Services for the next Annual Support Term. If the invoiced Support Fees are not paid on or before commencement of the Annual Support Term, then the Support Services shall lapse. If MSP licenses additional Licensed Software with respect to an Order over the course of the Order's Annual Support Term, then the renewal Support Fees may be prorated for expiring Support Services to co-terminate the expiration of the new Annual Support Term with expiration of existing Annual Support Term.

(b) Support Services for Managed Services or any other subscription license are included in the subscription license fee for the Software ("Subscription Fee"). Liquidware offers subscription licenses on a 12-month cycle that begins on the Term Start Date (each such 12-month cycle being an "Annual Subscription Term"). At the time of ordering the Licensed Software, MSP may elect to lock-in the price for Subscription Fees under that Order by purchasing one or more Annual Subscription Terms. Except where MSP has pre-paid Subscription Fees as described above, on or about 45 days prior to commencement of the next Annual Subscription Term, MSP will be invoiced Subscription Fees for the next Annual Subscription Term. If the invoiced Subscription Fees are not paid on or before commencement of the Annual Subscription Term, then the subscription license shall lapse. If MSP licenses additional Licensed Software with respect to an Order over the course of the Order's Annual Subscription Term, then Liquidware may prorate the renewal Subscription Fees for expiring subscription licenses to co-terminate the expiration of the new Annual Subscription Term with the expiration of the existing Annual Subscription Term.

5.3. Service Fees. Fees for Services will be set forth in any Statement of Work.

5.4. Invoicing and Payment. MSP shall pay those amounts indicated in an Order or Statement of Work. For Orders for licenses for Managed Services, Liquidware shall invoice MSP annually in advance for MSP licenses based on the total number of Users. No later than the beginning of each calendar quarter, MSP shall provide Liquidware with a written report stating the total number of Users across all Customers, and Liquidware will invoice MSP for the number of Users exceeding the number for which MSP has paid annually in advance. The amount invoiced during each interim quarter will be prorated for the remainder of the annual period for which MSP had originally paid. Payment is due within 21 days after receipt of an invoice from Liquidware, without set-off or deduction, and regardless of whether MSP has received payment from any Customer. MSP agrees to pay all reasonable travel, living, out-of-pocket, and material expenses incurred by Liquidware associated with Services as specified in a Statement of Work. All amounts are expressed in United States Dollars.

5.5. Taxes. The amounts set forth in an Order or Statement of Work are net amounts exclusive of all sales, use, withholding, excise, value added, and ad valorem taxes incurred by MSP or imposed in the performance of the Agreement or otherwise due as a result of the Agreement. MSP will be responsible for any and all such taxes and charges. If Liquidware is required to collect, or pays on MSP's behalf, any taxes or duties for which MSP is responsible, MSP will pay or reimburse Liquidware, as the case may be, for all such amounts. If MSP pays any withholding taxes based on the payments made by MSP to Liquidware hereunder, MSP will furnish Liquidware with written documentation of all such tax payments, including receipts and other customary documentation.

5.6. Recordkeeping; Audit. MSP shall maintain accurate and complete books and records necessary to demonstrate compliance with this Agreement. Liquidware may, at its expense, conduct an audit to verify that MSP is using and making available the Software in accordance with this Agreement. Any such audit shall be conducted during regular business hours, not more than once per year, and shall not unreasonably interfere with MSP's business activities. If an audit reveals that MSP has used, distributed or allowed use of the Software in excess of the use permitted by the Order and this Agreement, then MSP shall pay Liquidware for such unauthorized use based on the Liquidware retail price list in effect at the time the audit is completed. If the unpaid license fees exceed five 5% of the license fees paid, then MSP shall pay Liquidware's reasonable costs of conducting the audit.

6. WARRANTIES.

6.1. Software Warranties. Liquidware warrants to MSP for a period of 90 days after the Effective Date (the "Warranty Period") that (i) the Software will substantially perform in accordance with the Documentation; (ii) the storage media, if any, upon which the Software is delivered is free of defects in material and workmanship under normal use; and (iii) the Software does not contain any known virus or other routine that can disable, erase or otherwise harm the Software, or MSP's other software or data. The above warranties specifically exclude defects resulting from: (i) modifications made to the Software by anyone other than Liquidware; (ii) MSP's failure to install the most recent Error Correction, Update or Upgrade; (iii) MSP's use of the Software in connection with any computer equipment or devices that do not meet the minimum requirements set forth in the Documentation; or (iv) MSP's use of the Software in a manner that is not authorized in the Agreement. Liquidware does not warrant that use of the Software will be uninterrupted or error free. The Warranty Period only applies to the initial delivery of Software to MSP; delivery of Error Corrections, Updates and Upgrades shall not restart or have any other effect on the Warranty Period. MSP will initiate all Software warranty claims by contacting Liquidware's then-current support number. If Liquidware investigates a warranty claim that Liquidware reasonably determines to be caused by operator error, system configuration other than as described in the Documentation, or any other cause not covered by the warranties described in this Agreement, then Liquidware may, in its discretion, charge for Liquidware's services at Liquidware's then-current rates for Liquidware's investigation of the warranty claim. MSP's sole and exclusive remedy and Liquidware's sole responsibility for a breach of the warranty in this Section is to either repair or replace, at Liquidware's option, the non-conforming Software; provided, however, that Liquidware receives a warranty claim during the Warranty Period.

6.2. Mutual Warranties. Each party hereby represents and warrants that (a) it has the capabilities necessary to perform its obligations under this Agreement and (b) neither this Agreement nor any of its terms constitutes any conflict with any of its other obligations or agreements.

6.3. Warranty Disclaimers. EXCEPT AS SET FORTH IN THIS AGREEMENT, LIQUIDWARE MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ORAL OR WRITTEN, WITH RESPECT TO THE SOFTWARE, THE SUPPORT SERVICES AND ANY OTHER SERVICES PROVIDED PURSUANT TO THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION (I) OF MERCHANTABILITY, (II) OF SATISFACTORY QUALITY, (III) OF FITNESS FOR A PARTICULAR PURPOSE, (IV) NON-INFRINGEMENT, OR (V) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

7. CONFIDENTIALITY. The MSP and Liquidware may from time to time disclose to the other party confidential information relating to its business and affairs identified as being confidential, or, given the circumstances surrounding disclosure, should in good faith be treated as confidential by both parties. ("Confidential Information"). Confidential Information of Liquidware includes the Software and Documentation. Confidential Information does not include information: (a) generally available to or known to the public, (b) previously known to the recipient as fact, (c) independently developed by the recipient outside the scope of this Agreement, (d) lawfully disclosed by a third party, or (e) disclosed during testimony before any judicial or quasi-judicial court or tribunal. All information concerning un-released products will be treated as confidential until such time as the party owning the product makes information concerning the unreleased product available to the public. In such case only the specific information made available to the public shall be considered to no longer be Confidential Information. All other information concerning unreleased product shall remain Confidential Information. Neither party will disclose Confidential Information of the other to any third party without the express written consent of the other party, nor disclose or make use of any Confidential Information other than in the performance of this Agreement. Each party shall use at least the same degree of care to avoid disclosure of Confidential Information as it uses with respect to its own Confidential Information and will procure from any third party to whom confidential information may be disclosed an agreement containing provisions substantially similar to those set forth in this Agreement. Either party may seek injunctive relief to enforce its rights under these Sections.

8. INDEMNIFICATION.

8.1. Indemnity by Liquidware. If an action is brought against MSP claiming that the Software infringes any third party copyright or patent or misappropriates any third party trade secret rights, then Liquidware shall indemnify and hold MSP harmless against all damages and costs awarded against MSP, or settlements entered into by Liquidware on MSP's behalf, in the action, In performing its indemnity obligations in this Section, Liquidware may, at its option and expense, either (a) substitute a substantially equivalent non-infringing item for the infringing item; (b) modify the infringing item so that it no longer infringes but remains functionally equivalent; or (c) obtain for MSP the right to continue using, marketing and reselling such item. If none of the foregoing is commercially practicable in Liquidware's reasonable opinion, Liquidware may terminate the applicable license, accept a return of the infringing Software and refund to MSP prepaid fees for the period from the termination through the end of the Annual Subscription Term for which MSP has paid. The indemnity above will not apply if and to the extent that the infringement claim results from (i) a modification of the Software not provided by Liquidware; (ii) a failure to promptly install an Error Correction, Update or Upgrade or use of the Software not in accordance with its Documentation or this Agreement; or (iii) the combination of the Software with items not provided by Liquidware. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE AGREEMENT OR AN ORDER, THIS SECTION STATES THE ENTIRE LIABILITY AND OBLIGATION OF LIQUIDWARE WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

8.2. Indemnity by MSP. MSP agrees to indemnify, defend and hold harmless Liquidware, its affiliates, and their directors, officers, shareholders, employees and agents from and against any claims, suits, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from: (a) any actions or omissions on the part of MSP in marketing or reselling the Software (other than claims for which Liquidware indemnifies MSP pursuant to Section 8.1 above); (b) any breach of its obligations set forth in this Agreement; or (c) any failure on the part of MSP to pay any taxes, duties or assessments due hereunder or other amounts as set forth in Section 5.5.

8.3. Procedure. For any indemnification obligation, (a) the indemnified party shall notify the indemnifying party promptly in writing upon learning of such claim, (b) the indemnifying party will be given sole control of any proceedings or negotiations in connection with the claim, but the indemnified party's consent is required for any admission; (c) the indemnified party shall take no action that in the indemnifying party's reasonable judgment materially impairs the indemnifying party's defense of the claim; and (d) the indemnified party shall cooperate and assist in the defense or settlement of the claim, at the request an expense of the indemnifying party.

9. LIABILITY LIMITATIONS.

(a) EXCEPT FOR THE INDEMNIFICATION PROVISIONS PROVIDED HEREIN, IN NO EVENT WILL LIQUIDWARE AND ITS SUPPLIERS' AGGREGATE LIABILITY FOR ANY DAMAGES REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED THE FEES PAID BY MSP DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIM.

(b) IN NO EVENT WILL LIQUIDWARE AND/OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, GOODWILL, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH AN ORDER OR RESULTING FROM THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF LIQUIDWARE AND/OR ITS SUPPLIERS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF THE DAMAGES OCCURRING, AND WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

(c) The limitations above in this Section do not apply to a situation if, and only to the extent that, the limitations cannot under applicable laws limit the liability of Liquidware in that situation.

10. TERM AND TERMINATION.

10.1. Term. Unless earlier terminated as set forth in this Agreement, the term of this Agreement will be 12 months from the Effective Date and shall automatically renew for successive 12-month periods unless a party notifies the other party of its intent to not renew in writing at least 60 days prior to beginning of the renewal period (the "Term").

10.2. Termination. At any time, either party may immediately terminate this Agreement or suspend any rights granted under it on notice to the other, if the other party: (a) commits any material breach of any provision of this Agreement related to a Software license or Confidential Information; or (b) commits any material breach of any other provision of this Agreement which is not cured within 30 days after receipt of notice of the breach by the non-breaching party.

10.3. Termination of Rights in the Territory. In addition to any other rights and remedies available under this Agreement, at law or in equity, Liquidware may terminate MSP's rights under this Agreement with respect to the right to market and distribute the Software in the Territory or any part thereof upon ten days written notice in the event any government of or within the Territory (i) enacts currency control laws or regulations which make it impossible to export the fees due to Liquidware under this Agreement; (ii) nationalizes MSP; or (iii) commits acts which Liquidware, in its discretion, deems to be unreasonable and injurious to the Software or this Agreement.

10.4. Effect of Termination. On expiration or termination of this Agreement, the following will occur:

(a) MSP shall immediately pay all unpaid amounts due under this Agreement and shall stop marketing the Software.

(b) Termination of the Agreement pursuant to Section 10.2 terminates all Orders and Statements of Work. Outstanding Orders and Statements of Work will survive any expiration of the Term under Section 10.1.

(c) With respect to any outstanding Orders which have not terminated pursuant to subsection (b) above: (i) MSP's licenses to use the Software to Provide Managed Services will continue through the remainder of the subscription term as set forth in the applicable Order; (ii) except with Liquidware's prior written consent, MSP may not permit the renewal of any Customer Agreement beyond its then-current term in which this Agreement terminates; and (iii) Liquidware shall continue providing Support Services as set forth in this Agreement through the remainder of the subscription term as set forth in the applicable Order. MSP shall continue to pay Liquidware in accordance with the terms of outstanding Orders and Statements of Work, if applicable, and the rights granted to MSP and obligations of Liquidware are contingent on these payments.

(d) After the termination of all outstanding Orders and Statements of Work, MSP shall return to Liquidware, or at Liquidware's direction destroy, all copies of the Liquidware Products and Liquidware's Confidential Information in MSP's possession.

(e) Sections 2.4, 5, 6.3, 7, 8, 9, 12 and 13 survive any expiration or termination.

10.5. Expectation. This Agreement is for a limited time only. The expiration or termination of this Agreement will not give rise to payment of any indemnity, compensation or damages of any sort by one party to the other party. MSP has no expectation and has received no assurances that its business relationship with Liquidware will continue for any specified time beyond the Term hereof, that any investment in promotion of the Software will be recovered or recouped, or that it will receive any anticipated amount of profits by virtue of this Agreement.

11. COMPLIANCE.

11.1. Compliance with Laws. MSP shall comply with all applicable laws and regulations throughout the Territory regarding its activities under this Agreement, including those regarding electronic and telephonic marketing and communications, bribery, money laundering or other corrupt practices.

11.2. Data Protection. MSP shall comply with all applicable data protection and privacy laws and regulations and in particular, shall process any personal data obtained by it in connection with this Agreement, solely for the purposes contemplated by this Agreement. MSP will provide to Liquidware certain business contact information regarding its personnel and those of its Customers (including names, phone numbers, and e-mail addresses). MSP hereby authorizes Liquidware to use, store and process this information anywhere Liquidware or its affiliates do business, which may include the United States. Liquidware will process and use such information only in connection with the parties' business relationship and in accordance with its privacy policy available at <http://www.liquidware.com/privacy>, and may provide such

information to its contractors, business partners, assignees and affiliates for uses consistent with their collective business activities in connection with the business relationship between Liquidware and MSP and Customers, including communicating with them (for example, for processing orders, for promotions, and for market research). MSP represents and warrants that it has obtained all consents necessary for Liquidware and its affiliates to store, process and use such information as set forth above. If MSP or any individual has any questions regarding Liquidware's use of such information or wants to access, update or remove such information, Liquidware may be contacted at marketing@liquidwarelabs.com.

11.3. Export Controls. Without limiting the generality of any other provisions of the Agreement, MSP (a) shall comply with any and all applicable laws, regulations, rulings and executive orders on exportation, including without limitation, the U.S. Export Administration Regulations, and obtain any approvals, licenses and classifications required by the United States to export any items in or related to any Software and (b) shall not export, transship or re-export any Software, Documentation or any technical information related to the Software (or any portion thereof) to any person or entity prohibited by any regulation, order or ruling of the United States (including without limitation those on any restricted parties lists) or to any Customer in or from any country subject to a US embargo. MSP shall appropriately screen each Customer against restricted parties lists prior to the placing any Order for such Customer.

12. GOVERNING LAW AND VENUE. (a) This Agreement will be exclusively construed, governed and enforced in all respects in accordance with the internal laws (excluding all conflict of law rules) of the following: (i) England and Wales if MSP is located in the United Kingdom, Netherlands, Sweden, Norway or Finland, (ii) Switzerland if MSP is located in a country in the European Union (excluding UK, Netherlands, Sweden, Norway and Finland), or (iii) the State of Illinois, USA, if MSP is located in in any country other than those described in subpoints (i) or (ii) above. The United Nations Convention on Contracts for the International Sale of Goods will not apply in any respect to this Agreement or the parties thereto.

(b) If MSP is located in the United States, then the exclusive jurisdiction and venue for all disputes regarding this Agreement will be a court of competent jurisdiction in Cook County, Illinois. Otherwise, all disputes regarding this Agreement shall be finally resolved by binding arbitration before a single arbitrator pursuant to the then-existing Rules of Conciliation and Arbitration ("Rules"), and under the auspices, of the International Chamber of Commerce ("ICC"). The arbitrator shall be knowledgeable in the chosen law and the software industry. At either party's request, the arbitrator shall give a written opinion stating the factual basis and legal reasoning for the decision. The arbitrator shall have the authority to determine issues of arbitrability and to award damages as permitted by this Agreement. The parties, their representatives, and any other participants shall hold the existence, content, and result of arbitration in confidence. The arbitration proceedings will be in English and will take place in Chicago, Illinois, USA. Judgment on the arbitration award may be entered in any court having jurisdiction. Notwithstanding the foregoing, Liquidware may, at its sole discretion, seek preliminary judicial relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief) as necessary to enforce its rights in its Proprietary Information or intellectual property.

(c) The official language of this Agreement is English. All contract interpretations, notices and dispute resolutions are to be in English. Any attachments or amendments to this Agreement are to be in English. Translations of any agreement documents are not to be construed as official or original versions of the documents.

13. MISCELLANEOUS.

13.1. Notices In order to be valid, a notice under this Agreement must be sent in writing to the address listed on the first page or to a different address designated by the recipient in accordance with this Section. A valid notice or other communication will be deemed received upon the first to occur of actual receipt or (a) upon delivery if personally delivered or sent by a nationally recognized courier (fees prepaid), or (b) on the seventh day after being deposited in the mail if mailed via certified mail (return receipt requested, postage prepaid), or (c) upon delivery if sent by email via a commercially available email service which provides the sender legally valid and court admissible evidence of email correspondence (e.g., RPost).

13.2. Force Majeure. Liquidware is not liable for failure to perform any of its obligations if caused by an event outside its reasonable control.

13.3. Counterparts. The Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed an original and all of which will constitute the same instrument.

13.4. Assignment. This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement. MSP may not assign this Agreement or the rights and obligations thereunder to any other person or entity without the prior written consent of Liquidware. Liquidware may assign or delegate any or all of its right or obligations under this Agreement in whole or in part in its discretion. Any assignment in violation of this Section is void and of no effect.

13.5. Publicity. The parties may publicly announce that they have entered into this Agreement and describe their relationship in general terms, excluding financial terms. Neither party will make any other public announcement or press release regarding this Agreement or any activities performed hereunder without the prior written consent of the other party.

13.6. Severability. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will be valid and enforceable to the fullest extent permitted by applicable law.

13.7. Waiver; Amendment. No waiver or modification of any provision of this Agreement will be effective unless it is in writing, refers to this Agreement, and is signed by authorized representatives of the parties. No failure or delay by either party to exercise any right, power, or remedy constitutes a waiver of that right, power, or remedy. A party's waiver of the performance of any covenant or any breach is not to be construed as a waiver of any succeeding breach or of any other covenant.