

Unless otherwise agreed to by Breqwatr in writing, the Commercial Terms of Sale apply to all purchasers of Breqwatr hardware, software and services either directly from Breqwatr or who purchase through a reseller. By placing your order, you accept and are bound to the Commercial Terms of Sale below.

Purchases of Products, Software, or Services under this Agreement shall be solely for Customer's own internal use and not for resale purposes.

Breqwatr reserves the right to add, delete or amend these Terms and Conditions without prior written notice at any time, at Breqwatr's sole discretion.

1.0 APPLICATION OF TERMS AND CONDITIONS OF SALE

1.1 Sale, performance, and use of Products, Software, and Services are subject to the terms of this agreement between you, the customer ("you" or "Customer") and Breqwatr (the "Agreement"). "Breqwatr" means Breqwatr, on behalf of itself and its suppliers and licensors, or the entity identified on your order confirmation, invoice, or other form of purchase document entered into by you at the time you purchased the Products, Software, or Services. In instances where Customer purchases through a reseller or distributor, final prices and terms and conditions of sale will be as agreed between Customer and the third party from which Customer makes such purchases; however, the terms set forth herein are applicable to your use of Breqwatr Products, Software and Services.

1.2 Definitions

"Breqwatr Products" means any hardware, software, or services, supplied by Breqwatr that is branded with the Breqwatr trademark.

"Third Party Products" refers to hardware, products or software supplied by Breqwatr under the brand name of a third party sold through Breqwatr.

"Products" means collectively both Breqwatr Products and Third Party Products.

"Services" means any and all services provided by Breqwatr as described in one or more Service Agreements.

"Software" means any software, script, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by Breqwatr to you. Software includes software locally installed on your systems and software accessed by you through the Internet or other remote means.

"Deliverables" means the tangible and intangible materials, including reports, studies, drawings, findings, manuals, procedures, and recommendations prepared by Breqwatr or its suppliers, licensors, or subcontractors in the course of performing the Services.

"Materials" means all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as product manuals, specification sheets, brochures, text, graphics, logos, button icons, images, audio clips, information, data, photographs, graphs, videos, typefaces, music, sounds, and software.

"Service Agreements" are service contracts, including "Statements of Work," and any other such mutually agreed upon documents. Breqwatr may provide Services, Software, or Deliverables to you in accordance with one or more Service Agreements. Each Service Agreement will be interpreted as a single agreement, independent of any other Service Agreement, so that all of the provisions are given as full effect as possible.

1.3 Additional Agreements. This Agreement, together with the Service Agreement, and any other such mutually agreed upon documents, form a legally binding contract between you and Breqwatr in relation to your purchase and use of Products and Software, and Breqwatr's performance of Services.

1.4 Not for Resale. Customer agrees and represents that it is buying for its own internal use and not for resale.

2.0 QUOTES; ORDERS; PAYMENT TERMS

2.1 Quotes; Orders. Any quotation provided by Breqwatr will be valid for the duration stated in the quotation. If no duration is stated, such quotation will be valid for 10 days. Breqwatr cannot confirm the price of a Product until after you order the Product. Although Breqwatr strives to provide accurate product and pricing information, errors or misprints may occur. Breqwatr is not responsible for pricing, typographical, or other errors in any offer. In the event that a Product is listed at an incorrect price or with incorrect information due to an error in pricing or product information, Breqwatr reserves the right, at our sole discretion, to refuse or cancel any orders, or part of an order placed or subsequently processed by Breqwatr for that Product and terminate the purchase agreement without further liability. In the event that a Product is priced in error or a Product information error occurs, Breqwatr may, at our sole discretion, contact you for instructions, cancel your order and notify you of such cancellation, terminate the purchase agreement and/or correct the error.

2.2 All orders and transactions are subject to acceptance or cancellation by Breqwatr, in Breqwatr's sole discretion.

2.3 Third-Party Products. Orders for Third-Party Products are subject to availability and are cancellable by Breqwatr. Orders for Third-Party Products are non-cancellable by Customer.

2.4 Payment Terms. Terms of payment are within Breqwatr's sole discretion, and unless otherwise agreed to by Breqwatr, payment must be received by Breqwatr prior to Breqwatr's acceptance of an order. Each accepted order will be interpreted as a single Agreement, independent of any other orders. Payment of orders shall be made in the currency identified by Breqwatr in its invoice. Payment for Products, Software, and Services must be made by wire transfer, electronic funds transfer or some other prearranged payment method unless credit terms have been agreed to by Breqwatr. Payment to Breqwatr in respect of Products, Software and Services, as applicable, shall be made to the account indicated by Breqwatr (as may be amended from time to time). It is the responsibility of Customer to ensure payments are authorized and approved on time to ensure receipt of payment no later than the due date; in no case shall Breqwatr be responsible for ensuring such authorization or approval. Any assignment by Customer of its purchase order to a third-party financing company must be approved in advance in writing by Breqwatr, and in no case shall any such approval excuse Customer from its obligations hereunder.

2.5 Invoices. Other than where up-front payment in full was required prior to acceptance by Breqwatr of an order, Invoices will be due and payable within the time period noted on your invoice, or if not noted, then within 30 days, measured from the date of the invoice, subject to continuing credit approval by Breqwatr, such approval may be revoked without further notice from Breqwatr. Breqwatr may invoice parts of an order separately or may invoice purchases of the Products, Software and Services in one invoice to Customer.

2.6 Customer agrees that all invoices shall be deemed accurate unless Customer advises Breqwatr in writing of a bona fide, material error within fourteen (14) days of the date of such invoice. In the event that Customer advises Breqwatr of a material error, (i) payment of any amounts corrected or modified by Breqwatr in writing shall be due within fourteen (14) days of such correction, and (ii) all other amounts shall be paid by Customer by the invoice due date. In the event Customer withholds payment of any invoiced amounts upon an assertion by Customer that such amounts are erroneous, and Breqwatr subsequently concludes that such invoiced amounts are accurate, Customer shall pay a late payment fee as described in Section 2.7, from the due date, for such invoiced amounts, until Breqwatr's receipt of those amounts. In no case shall Customer be entitled to offset, defer or deduct any invoiced amounts that Breqwatr determines are not erroneous following the notification process set forth above.

2.7 Late Fees. Breqwatr reserves the right to charge you a late fee of 1.5% per month (18% per annum) applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late penalties will be recalculated every 30 days thereafter based on your current outstanding balance. In addition, Breqwatr, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate any or all Services and refuse additional orders for Products or Software from Customer until Breqwatr's receipt of all overdue amounts. Breqwatr shall have no liability to Customer for any such suspension or termination of services or for its refusal of additional orders. Breqwatr further reserves the right to seek collection of all overdue amounts (including by referral to third party collectors), plus all reasonable legal fees (including reasonable attorney's fees) and costs associated with such collection.

2.8 Changes. Any changes to Products, Software or Services requested by Customer in relation to an existing quote or order may be subject to additional charges.

2.9 Taxes; Shipping; Title. Taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes), environmental disposal surcharges, insurance, and shipping and handling charges are not included in Product prices unless expressly indicated at the time of sale. Unless you provide Breqwatr with a valid and accurate tax-exemption certificate applicable to your Product purchase and ship-to location, you are responsible for sales tax, duties, and any other taxes or governmental fees associated with your order. Title to Products (except title to Software which remains with the applicable licensors) passes from Breqwatr to Customer upon shipment to Customer. Loss or damage that occurs during shipping by a carrier selected by Breqwatr is Breqwatr's responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility. Shipping and delivery dates are provided as estimates only. Breqwatr is not liable for any loss, damage, cost or expense for any failure to deliver in accordance with the given delivery or shipment date. Breqwatr may ship or deliver the Products ordered in installments. You must notify Breqwatr within 21 days of the date of your invoice or acknowledgement if you believe any part of your order is missing, wrong, or damaged.

2.10 Prices. The prices charged for Products, Software, and Services purchased under this Agreement shall be the amounts set forth in the quotation, or as provided by the applicable invoice or Service Agreement relating to such Software or Services. Quoted prices will remain in effect only until the expiration date of the quote (or if no duration is stated, such quotation will be valid for 10 days) or Breqwatr's acceptance of your order, and such prices are subject to shortages in materials or resources, increases in the cost of manufacturing, or other factors.

2.11 Product availability. Product availability may be limited. Products ordered may not be available for immediate delivery. Breqwatr reserves the right, without liability or prior notice, to revise or cease to make available any or all Products, Software or Services.

2.12 Changed or Discontinued Products, Software, or Services. Breqwatr's policy is one of ongoing update and revision. Breqwatr may revise or discontinue Product, Software, or Services offerings at any time without prior notice to Customer. A change in a Product, Software, or Service may occur after a Customer places an order but before Breqwatr ships the Product or Software or performs the Service. As a result, Products, Software, or Services Customer receives might display minor differences from the Products, Software, or Services Customer orders. However, the Breqwatr Products and Software will meet or exceed all material specifications of such order. If the substitute Product, Software or Service differs in price from the original quotation or order, Customer will be given the opportunity to either reject and cancel the order, or accept the substitute Product and price for the substitute Product, which may differ from the price of the original Product.

2.13 Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.

2.14 Returns and Exchanges. Breqwatr's return policy can be found in the Limited Warranty statement and you agree to those terms. Before returning or exchanging a Product, you must contact us directly to obtain a return authorization. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with your original purchase.

3.0 TERM; AUTO-RENEWAL; TERMINATION

3.1 Term; Auto-Renewal. This Agreement commences on the date you place your order and continues until all Services and Software licenses and applicable Product warranties have expired or been terminated. Each Service and license to Software will continue for the term stated in the Service Agreement or the Software license, unless otherwise terminated. Breqwatr may, at its option, propose to renew the Service and the Software license by sending you an invoice or, subject to prior notification, continuing to perform the Service or make the Software available to you. You may (where permitted by law) agree to such renewal of the Service and Software license by paying such invoice by its due date or by continuing to order Services or use the Software.

3.2 Termination of Services and Software License. Either party may terminate an individual Service Agreement if the other party commits a material breach of such agreement and the breach is not cured within 90 days of receipt of written notice from the injured party except Breqwatr may immediately terminate a Service Agreement if you fail to make payment for the Services when due. Termination of any or all Service Agreements will not terminate this Agreement. Unless renewed in accordance with this Agreement, this Agreement will terminate automatically upon the expiration of the agreed term of Services and Software license. Breqwatr may terminate this Agreement immediately, including prior to the expiration of the term of Services or Software license, if (1) you fail to make any payment when due; (2) you are acquired by or merge with a competitor of Breqwatr; (3) you declare bankruptcy or are adjudicated bankrupt; or (4) a receiver or trustee is appointed for you or substantially all of your assets. Upon termination of this Agreement, all rights and obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.

4.0 PROPRIETARY RIGHTS AND DELIVERABLES

4.1 Intellectual Property Ownership and Reservation of Rights. All right, title and interest in and to the intellectual property rights in Breqwatr Products, Software, Materials, and Services, including technology and trade secrets embodied therein and any custom developments created or provided in connection with or related to this Agreement, and any derivative works thereof, belong solely and exclusively to Breqwatr, Breqwatr Affiliates or their licensors or suppliers, and you have no rights whatsoever in any of the foregoing other than the rights expressly set forth in this Agreement. Nothing in this Agreement or otherwise will be deemed to grant to you an ownership interest in any of the intellectual property rights in or to any Breqwatr Products, Software or Services, in whole or in part. The Products, Software, Materials, and Services are protected pursuant to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. You may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Products, Software and Materials, in whole or in part.

4.2 Deliverables. Breqwatr and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title, and interest in any ideas, concepts, know-how, documentation, and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, Breqwatr grants you a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which you do business, solely for your internal use, and solely as necessary for you to enjoy the benefit of the Services as stated in the applicable Service Agreements.

5.0 SUPPORT SERVICES

5.1 Your Responsibilities. When Services consist of repair of Breqwatr Products still covered under the system's limited warranty, such Services shall be those repair services that are necessary to fix a defect in materials or workmanship of a system or any standard system component covered by this Agreement. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Breqwatr (or its representatives), or repairs on out of warranty systems are not included. Unless otherwise expressly provided in a Service Agreement, Services do not include repair of any system or system component that has been damaged as a result of (1) accident, misuse, or abuse of the system or component (such as use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions by anyone other than Breqwatr (or its representatives); (2) the moving of the system from one geographic location or entity to another; or (3) an act of nature such as lightning, flooding, tornado, earthquake, or hurricane.

5.2 Customer Authorization for Provision of Services. Some warranties or service-contracts for Third-Party Products may become void if Breqwatr or anyone other than an authorized service provider provides services for or works on such hardware or software (such as providing maintenance or repair services for the Third-Party Products). BREQWATR DOES NOT TAKE RESPONSIBILITY FOR ANY EFFECT THAT THE BREQWATR SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS.

5.3 You authorize Breqwatr to use or otherwise access any and all Customer-provided Third-Party Products as necessary or as requested by Customer in Breqwatr's performance of the Services, including copying, storing, and reinstalling a backup system or data. You shall defend, indemnify, and hold Breqwatr harmless from any third-party claim or action arising out of your failure to provide such authorization (such as obtain appropriate licenses, intellectual-property rights, or any other permissions, regulatory certifications, or approvals associated with technology, software, or other components).

6.0 SOFTWARE

6.1 Accompanying License. Use of Software is subject to and governed by the End User Software License Agreement ("Breqwatr EULA") and Customer agrees to be bound by those terms.

6.2 Restrictions. Customer may not copy, modify, adapt, translate or create a derivative work, collective work, or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Customer may not license, sell, assign, sublicense, or otherwise transfer or encumber the Software; and may not use the Software in excess of the authorized number of licensed seats for concurrent users, sites, or other criteria specified in the applicable Service Agreements. In addition, Customer may not access the Software to monitor its availability, performance, or functionality, or for any other benchmarking or competitive purpose.

6.3 Customer is further prohibited from (1) permitting other individuals or entities to use the Software or copy the Software or Services; (2) attempting to probe, scan, or test the vulnerability of Software (3) using the Software to engage in fraudulent activity of any nature;

6.4 Audit. You hereby grant Breqwatr, or an agent designated by Breqwatr, the right to perform an audit of your use of the Software during normal business hours; you agree to cooperate with Breqwatr in such audit; and you agree to provide Breqwatr with all records reasonably related to your use of the Software. The audit will be limited to verification of your compliance with the terms of this Agreement.

6.5 Open Source Software. A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL BREQWATR, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

7.0 HIGH RISK DISCLAIMER

7.1 High-Risk Disclaimer. You understand that Breqwatr Products have been designed, manufactured, and tested by Breqwatr or its suppliers for use in general-use office/business environments. Breqwatr has not tested or certified Breqwatr Products for use in any high-risk applications, including the operation of nuclear facilities, aircraft navigation, air traffic control, emergency communications systems, life support machines, weapons systems, or any other application where the failure or malfunction of any Breqwatr Products can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm ("High Risk Applications"). The Services are not fault-tolerant and are not designed or intended for use in, and you shall not use any Services in, any hazardous environments requiring fail-safe performance or in any High Risk Applications. You understand and agree that Breqwatr makes no warranties or assurances that the Products and Services are suitable for any High Risk Applications and you shall defend and indemnify Breqwatr from any claims made by third parties resulting from any such High Risk Applications. Breqwatr expressly disclaims any express or implied warranty of fitness for High Risk Applications.

8.0 LIMITED WARRANTY

8.1 Breqwatr's Limited Warranty can be found in the Limited Warranty statement and you agree to those terms. Breqwatr reserves the right to modify its warranty statement at any time, in its sole discretion. Warranty is only valid upon Breqwatr's receipt of payment in full for the Breqwatr Product to be warranted.

8.2 EXCEPT AS PROVIDED IN THE LIMITED WARRANTY STATEMENT, BREQWATR MAKES NO OTHER WARRANTIES OR CONDITIONS AND THE WARRANTY STATEMENT IS IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, PROMISES, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BREQWATR EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS NOT STATED IN THE PRODUCT'S LIMITED WARRANTY STATEMENT. ANY IMPLIED WARRANTIES AND CONDITIONS THAT MAY BE IMPOSED BY LAW ARE LIMITED IN DURATION TO THE APPLICABLE WARRANTY PERIOD.

8.3 TO THE EXTENT ALLOWED BY LOCAL LAW, BREQWATR'S LIABILITY FOR BREQWATR HARDWARE WARRANTY CLAIMS IS LIMITED TO REPAIR OR REPLACEMENT AS SET FORTH IN THE APPLICABLE LIMITED WARRANTY STATEMENT.

8.4 WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY BREQWATR (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH PRODUCT OR SOFTWARE INSTRUCTIONS, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS, SOFTWARE, OR SERVICES.

8.5 BREQWATR'S LIABILITY FOR BREQWATR SERVICE WARRANTY CLAIMS IS LIMITED TO REMEDYING THE NON-CONFORMING SERVICE AS SET FORTH IN THE APPLICABLE LIMITED WARRANTY STATEMENT.

8.6 WITH RESPECT TO YOUR USE OF THE SOFTWARE (1) BREQWATR DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION THAT SOFTWARE PROVIDED TO YOU IN CONNECTION WITH THIS AGREEMENT IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS; OR THAT ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED; (2) YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF BREQWATR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (3) BREQWATR DISCLAIMS AND MAKE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF ANY REPORTS, DATA, RESULTS, OR OTHER INFORMATION OBTAINED OR GENERATED BY YOU RELATED TO YOUR USE OF THE SOFTWARE; AND (4) USE OF THE SOFTWARE IS ENTIRELY AT YOUR OWN RISK AND BREQWATR SHALL HAVE NO LIABILITY RELATING TO SUCH USE.

9.0 LIMITATION OF LIABILITY

9.1 BREQWATR WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER. NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING: (1) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (3) LOSS OF BUSINESS OPPORTUNITY; (4) BUSINESS INTERRUPTION OR DOWNTIME; OR (5) DELIVERABLES, BREQWATR PRODUCTS, OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.

9.2 BREQWATR'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) SHALL NOT EXCEED THE AGGREGATE DOLLAR AMOUNT YOU PAID TO BREQWATR UNDER THIS AGREEMENT FOR SUCH PRODUCTS, SOFTWARE OR SERVICES THAT CAUSED THE LIABILITY IN THE PREVIOUS 12 MONTHS PRIOR TO SUCH CLAIM FOR. The existence of more than one claim will not increase or otherwise alter these limitations on Breqwatr's liability.

9.3 THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATION OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR BREQWATR'S SALE OF PRODUCTS, SOFTWARE, OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

10.0 CONFIDENTIALITY

10.1 Confidentiality. In connection with this Agreement, each party may have access to or be exposed to information of the other party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Confidential Information"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents, and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (2) is rightfully received by the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall continue for two years from the date of disclosure.

11.0 INDEMNIFICATION

11.1 Breqwatr shall defend and indemnify you against any third-party claim or action (provided that such third party is not affiliated with you) that Products, Software, Services, or Deliverables (excluding Third-Party Products and open source software) prepared or produced by Breqwatr and delivered pursuant to this Agreement infringe or misappropriate that third party's Canadian or U.S. patent, copyright, trade secret, or other intellectual property rights ("Indemnified Claims"). In addition, if Breqwatr receives prompt notice of an Indemnified Claim that, in Breqwatr's reasonable opinion, is likely to result in an adverse ruling, then Breqwatr shall at its option, (1) obtain a right for you to continue using such Products, Deliverables or Software or allow Breqwatr to continue performing the Services; (2) modify such Products, Software, Services or Deliverables to make them non-infringing; (3) replace such Products, Software, Services, or Deliverables with a non-infringing equivalent; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product, Deliverables, or Software. Notwithstanding the foregoing, Breqwatr shall have no responsibility for, and no obligation to defend or indemnify you for, any claim resulting or arising from (1) any Third Party Products; (2) any open source software; (3) modifications of the Breqwatr Products or Services that were not performed by or on behalf of Breqwatr; (4) the combination, operation, or use of any of the Breqwatr Products or Services with any Third Party Product (where such combination, operation or use causes the claimed infringement); (5) Breqwatr's compliance with any of your written specifications or directions, including the incorporation of any materials, processes, or Third Party Products provided by or requested by you; or (6) any circumstance for which you are required to indemnify any Breqwatr Party. Breqwatr's duty to indemnify and defend under this paragraph is contingent upon: (i) Breqwatr receiving prompt written notice of the third-party claim or action for which Breqwatr must indemnify you, (ii) Breqwatr having the right to solely control the defense and resolution of such claim or action, and (iii) your cooperation with Breqwatr in defending and resolving such claim or action. This Section states Customer's exclusive remedies for any third-party intellectual property claim or action, and nothing in this Agreement or elsewhere will obligate Breqwatr to provide any greater indemnity to Customer.

11.2 You shall defend and indemnify Breqwatr against any third-party claim or action arising out of (1) your failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by you, or associated with software or other components directed or requested by you to be installed or integrated as part of the Products, Software Services or Deliverables; (2) your misuse or modification of any Products, Software or Services; (3) your breach of Breqwatr's proprietary rights as stated in this Agreement; (4) any inaccurate representation regarding the existence of an export license or any allegation made against Breqwatr due to your violation or alleged violation of applicable export laws, regulations, or orders; or (5) your providing of (or providing access to) Excluded Data to Breqwatr.

11.3 Each party shall defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations under this Agreement.

12.0 GOVERNING LAW

12.1 You agree that this Agreement, any purchase hereunder and any Dispute will be governed by the laws of the Province of Ontario.

13.0 DISPUTE RESOLUTION - ARBITRATION

YOU AND BREQWATR ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR, WHERE APPLICABLE, TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

13.1 The parties will attempt to resolve any claim, dispute, or controversy (whether in contract, tort or otherwise, whether pre-existing, present or future, and including statutory, consumer protection, common law, intentional tort and equitable claims) between you and Breqwatr Parties arising from or relating to any purchase of Products or Services, this Agreement or any Service Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from such written agreements (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), the reseller or channel partner program, Breqwatr's advertising, or any related purchase (each a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator.

13.2 If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION administered by ADR Chambers Canada pursuant to the general ADR Chambers Rules for Arbitration. Arbitration proceedings shall be governed by this Dispute Resolution – Arbitration section and the applicable procedures of the selected arbitration administrator in effect at the time the claim is filed. The arbitration will be limited solely to the individual dispute or controversy between you and Breqwatr.

13.3 You agree to arbitration on an individual basis. Where enforceable, NEITHER YOU NOR BREQWATR SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER RESELLERS OR PARTNERS, OR ARBITRATE ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (BUT IN NO CASE SHALL THERE BE A CLASS ARBITRATION).

13.4 The arbitration hearing shall take place in Toronto, Ontario, Canada), and will be governed by the Arbitration Act of Ontario and the applicable laws of Ontario and Canada. The arbitrator shall render its award in writing and will include the findings of fact and conclusion of law upon which the award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this Dispute Resolution – Arbitration section.

13.5 Limitation Period. NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

14.0 OTHER TERMS

14.1 Headings, Interpretation and Language. The section headings used herein are for convenience and reference only and are not to be considered in construing or interpreting this Agreement. All references herein to "Sections" will be deemed references to sections of this Agreement. The words "include" and "including", and other variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation". The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including all notices, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

14.2 Independent Contractor Relationship; Assignment; Subcontracting. The parties are independent contractors. No provision of this Agreement will or shall be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Breqwatr and Customer, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to such entities. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement. Breqwatr has the right to assign, subcontract, or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, provided that Breqwatr shall remain responsible for the performance of Services under this Agreement. Otherwise, neither party may assign this Agreement without the permission of the other.

14.3 Force Majeure. Breqwatr shall not be liable to you for any delays or failure to perform any of its obligations under this Agreement during any period in which such performance is delayed or prevented by circumstances beyond its reasonable control including fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.

14.4 Export Compliance. You acknowledge that the Products, Software, and Services provided under this Agreement, which may include technology and encryption, are subject to the customs and export control laws and regulations of Canada and the United States ("U.S."), may be rendered or performed either in Canada, the U.S., in countries outside of Canada and the U.S., or outside of the borders of the country in which you or your system is located, and may also be subject to the customs and export laws and regulations of the country in which the Products, Software, or Services are rendered or received. You agree to abide by those laws and regulations. You are solely responsible for obtaining any necessary licenses relating to the export of software. You further represent that any software provided by you and used as part of the Products, Software, or Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. Each Party agrees to indemnify, defend and hold the other harmless from any third-party claims, demands, or causes of action against the other due to the indemnifying party's violation or alleged violation of the applicable export laws, regulations or orders.

14.5 Regulatory Requirements. Breqwatr is not responsible for determining whether any Third-Party Product to be used in the Products, Software, or performance of the Services, satisfies the local regulatory requirements of the country to which such Products, Software, or Services are to be delivered, and Breqwatr shall not be obligated to provide any Product or Software or perform any Services where the resulting Products, Software, or Services do not satisfy the local regulatory requirements.

14.6 Entire Agreement; Severability. This Agreement is the entire agreement between you and Breqwatr with respect to its subject matter and supersedes all prior oral and written understandings, communications, or agreements between you and Breqwatr. Any preprinted terms on your purchase order shall be given no force or effect and no terms of a purchase order that conflict with this Agreement shall be binding on Breqwatr. No amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this Agreement should be found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated.

14.7 Updates. Breqwatr reserves the right to update this Agreement at any time. Your rights and obligations shall be as provided in the version of this Agreement executed by you or available to you at the time of your purchase of Products, Software, or Services or, when applicable, renewal of Software or Services.

14.8 Notices. Any notice to Breqwatr relating to this Agreement must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (including facsimile or e-mail) as specified by Breqwatr in writing, and will be effective upon receipt. Notice from Breqwatr may be sent to you by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address and contact information provided by you to Breqwatr in connection with this Agreement.

Breqwatr
Attention: Contracts Manager
14845-6 Yonge Street, Suite 381
Aurora, ON L4G 6H8

Commercial Terms of Sale
Revision Date April 17, 2014
END OF AGREEMENT