



Customer Subscription Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES. YOU ACQUIRE NO RIGHT, TITLE OR INTEREST TO ANY AXIAPAC APPLICATION OR SUCH PROGRAM CODE WHICH ARE LICENCED FOR YOUR USE AS A PERIODIC SUBSCRIPTION UNDER THIS AGREEMENT. IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A SALES INVOICE THAT REFERENCES THE SERVICES CONTAINED IN THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE OR SUBSCRIBE TO THESE SERVICES.

You may not access the Services if You are a direct competitor, except with Our prior written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. This Agreement was last updated on the 1st July 2019. It is effective between You and Us as of the date of You accepting this Agreement.

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1. DEFINITIONS

"Active Employee" means an Employee defined in the Service who does not have a Termination Date specified in the Employee Form.

"Active User" means a User defined in the Service who has not been Deactivated.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

"Agreement" means this Subscription Agreement.

"API Library" means the Axiapac application programming interface available to non-Axiapac applications that register with Axiapac to provide interoperation with an Axiapac application

"Application Expiry Date" notwithstanding the term of the subscription agreement, each Application specified in the Sales Invoice will expire at such date as the prorated amount received as payment to Us from You applies to the agreement term.

"Assistance" means assistance provided to a user for events that involve system faults, loss of data, loss of functionality or software bugs. It explicitly does not provide for (a) user training, or (b) advice that you would reasonably expect to engage a qualified practitioner to undertake, or (c) assistance with software installation, configuration or maintenance and (d) solutions or recommendations to business related processes or operations thereof.

"Axiapac Hosted Environment" means Axiapac is responsible for providing and maintaining the necessary computer hardware, networking, operating system software, databases, security protocols, data backups and other necessary infrastructure to install and operate the Axiapac services and content in compliance with this agreement.

"Beta Services" means Axiapac services or functionality that may be made available to a Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

"Browser" means any web-based application that retrieves, and/or processes and/or presents Axiapac services on the World Wide Web using a uniform resource identifier (URL)

"Entity Domain" means the URL under which a User accesses the service and content for a specific Entity. A subscription can include additional entity domains as specified in the Sales Invoice where applicable for an entity who has these Entity Domains under its Control. Each Entity Domain is a separate entity and is subject to its own User Licencing and associated usage limits.

"Content" means information obtained by Axiapac from publicly available sources or third-party content providers and made available to the Customer through the Services, Beta Services or pursuant to a Sales Invoice, as more fully described in the Documentation.

“Control” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Documentation” means the applicable legal and services documentation, and its usage guides and policies, as updated from time to time, accessible via axiapac.com or by login to the applicable Service.

“Employee Portal” means that access is through the Employee Portal Services using a browser and the individual using this service is defined as an Employee within the Entity Domain. The Employee Portal is subject to the Service Limits for Active Employees.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Marketplace” means an online directory, catalogue or marketplace of applications that interoperate with the Services, including, for example, apps available at the Apple Store or Google Play.

“Non Axiapac Application” means a Web-based, mobile, offline or other software application functionality that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You, is listed on a Marketplace, or is identified as such by Axiapac. Non-Axiapac Applications consume User Licences in accordance with their functionality and/or use of the Axiapac API Library and are subject to Limits on usage and the number of permitted Non Axiapac Applications for your Subscribed Service.

“Purchased Services” means Services that You or Your Affiliate purchase under a Sales Invoice, as distinguished from those provided pursuant to a free trial.

“Response Priority” means the required response time for Axiapac to respond to a support ticket once authorised by the User.

“Sales Invoice” is the Document that specifies the Fees and Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into a Sales Invoice hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto and pay all Fees specified in accordance with the Terms of the Sales Invoice.

“Service Help Desk” means the process available to a User to submit a request for assistance when a service is not operating as expected and/or in accordance with the documentation.

“Service Ticket” means the tracking number issued to a User for a specific request for support

“Services” means the products and services pursuant to You in accordance with the Sales Invoice or provided to You under a free trial, and made available online by Us, including associated Axiapac offline or mobile components, as described in the Documentation. “Services” exclude Content and Non-Axiapac Applications.

“Subscriber” means the controlling entity that is responsible for ensuring that each User is subject to and adheres to this agreement.

“User” means an individual who is authorised by You to use a Service, for whom You have purchased a subscription (or in the case of any Services provided by Us without charge, for whom a Service has been provisioned), and to whom You (or, when applicable, Us at Your request) have supplied a user identification and password (for Services utilizing authentication). Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business. “We,” “Us” or “Our” means the Axiapac company described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction). “You” or “Your” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity which has received the Sales Invoice.

“User Licence” means the User access to the Services from a browser session or API. A user will consume a Licence for each open browser session that logs into an Axiapac application. The User can access the Services from multiple tabs within this browser session whilst they remain logged into the application. The User can only consume one licence so they may not log into another Browser session whilst logged into any other Browser session.

“Your Data” means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-Axiapac Applications.

2. FREE TRIAL

If You register on Our website for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s), or (c) termination by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR PURCHASE APPLICABLE UPGRADED SERVICES BEFORE THE END OF THE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMISATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL NOTWITHSTANDING SECTION 9 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

3. OUR RESPONSIBILITIES

3.1. Provision of Purchased Services. We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Sales Invoice, (b) provide applicable Axiapac standard support for the Services to You at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice as provided in the Documentation), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving Our employees), Internet service provider failure or delay, Non-Axiapac Application, or denial of service attack.

3.2. Protection of Your Data. Axiapac provides administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation, including Data backups that are performed daily, however we cannot guarantee there will be no loss of data. You must maintain copies of all Data inputted or uploaded into the Service.

3.3. Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein. Our personnel will not access your data or make disclosures about Your Data except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

3.4. Beta Services. From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services or not at Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, however, all restrictions, Our reservation of rights and Your obligations concerning the Services, and use of any related Non-Axiapac Applications and Content, shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

4. USE OF THE SERVICE OR CONTENT

4.1 Subscriptions. Unless otherwise provided in the applicable Sales Invoice or Documentation, (a) Services and access to Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

4.2 Support. Unless otherwise provided in the applicable Sales Invoice or Documentation, Support is provided as part of the subscription via the service help desk, with each request issued a unique support ticket and response priority. In the event that the online service is unavailable a support ticket may be raised by email as per the documentation.

4.3 Usage Limits. Services and Content are subject to usage limits, including, for example, the number of Active User Licences and Limits on the number of Active Employees. The Sales Invoice and Documentation will specify these limits and include the expiration date of the agreement. Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User who will no longer use the Service or Content may be deactivated so that a new individual can be added by creating a new User. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will be issued a Sales Invoice for additional quantities of the applicable Services or Content, and/or pay any Sales Invoice for excess usage in accordance with Section 6.2 (Invoicing and Payment).

4.4 Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement, Documentation and Sales Invoice, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, Sales Invoice and applicable laws and government regulations, and (e) comply with terms of service of any Non-Axiapac Applications with which You use Services or Content. You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, unless expressly stated otherwise in a Sales Invoice or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-Axiapac Application to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-Axiapac Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, or use any of Our Services to access or use any of Our intellectual property except as permitted under this Agreement, a Sales Invoice, or the Documentation, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in a Sales Invoice or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service or Content in order to build a competitive product or service or to benchmark with a Non-Axiapac product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law). Any use of the Services in breach of this Agreement, Documentation or Sales Invoice, by You or Users that in Our judgment threatens the security, integrity or availability of Our services, may result in Our immediate suspension of the Services, however We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension.

5. NON-AXIAPAC PROVIDERS

5.1. We or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-Axiapac Applications, products or consulting services. Any acquisition by You of such products or services, and any exchange of data between You and any Non-Axiapac provider, product or service is solely between You and the applicable Non-Axiapac provider. We do not warrant or support Non-Axiapac Applications or other Non-Axiapac products or services, whether or not they are designated by Us as "certified" or otherwise, unless expressly provided for otherwise in a Sales Invoice.

5.2. Non-Axiapac Applications and Your Data. If You choose to use a Non-Axiapac Application with a Service, You grant Us permission to allow the Non-Axiapac Application and its provider to access Your Data as required for the interoperation of that Non-Axiapac Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by such Non-Axiapac Application or its provider.

5.3. Integration with Non-Axiapac Applications. The Services may contain features designed to interoperate with Non-Axiapac Applications. To use such features, You may be required to obtain access to such Non-Axiapac Applications from their providers, and may be required to grant Us access to Your account(s) on such Non-Axiapac Applications. We cannot guarantee the continued availability of such Service features, and may cease providing them without entitling You to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Axiapac Application ceases to make the Non-Axiapac Application available for interoperation with the corresponding Service features in a manner acceptable to Us.

5.4. Registration. Non-Axiapac Applications must be registered with Axiapac to interoperate with Our Services, notwithstanding that (a) they may not require access to our API library or (b) You have given them authorisation to access Our Services. Registration is at Our sole discretion.

5.5. Non-Axiapac Applications User Licensing. Non-Axiapac Applications are subject to the user licencing and usage limit requirements of this agreement. A Non-Axiapac Application must not operate in such a way as to violate this Agreement.

6. FEES AND PAYMENT FOR PURCHASED SERVICES

6.1. Fees. You will pay all fees specified in the Sales Invoice. Except as otherwise specified herein or in a Sales Invoice, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

6.2. Annual Sales Invoice and Payment. For yearly subscription plans you may pay the Sales Invoice prior to the due date by deposit into our nominated Bank Account or by credit card / debit card using our online facility.

6.3. Monthly Sales Invoice and Payment. For monthly subscriptions plans you will provide Us with valid and updated credit card or debit card information so we can process this card as a recurring payment, or an authorise direct debit with our authorised provider. You authorize Us to charge such payment arrangements for all Purchased Services listed in the Sales Invoice for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Sales Invoice. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

6.4. Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Sales Invoice on payment terms shorter than those specified in Section 6.2 and Section 6.3.

6.5. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. Other than for customers paying by credit card, debit card or direct debit whose payment has been declined, We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice) for billing notices, before suspending services to You.

6.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, GST, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 6.5, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

6.7. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

7. PROPRIETARY RIGHTS AND LICENCES

7.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our licensors and Content Providers reserve all of Our/their rights, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

7.2. Access to and Use of Content. You have the right to access and use applicable Content subject to the terms of applicable Sales Invoice, this Agreement and the Documentation.

7.3. License to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Our and/or Our Affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of Our or Our Affiliates' services.

8. CONFIDENTIALITY

8.1. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Sales Invoices (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

8.2. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Sales Invoice to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Sales Invoice to a subcontractor or Non-Axiapac Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.

8.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. Our Warranties. We warrant that during an applicable subscription term (a) this Agreement, the Sales Invoice and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Integration with Non-Axiapac Applications" section above, We will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Your exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.

9.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY PROVIDERS.

10. MUTUAL INDEMNIFICATION

10.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that any Service infringes or misappropriates such third party's intellectual property rights (a "**Claim Against You**"), and will indemnify You from any damages, legal fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement approved by Us in writing of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defence and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Our warranties under "Axiapac Warranties" above, (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defence and indemnification obligations do not apply to the extent a Claim Against You arises from Content, a Non-Axiapac Application or Your use of the Services in violation of this Agreement, the Documentation or applicable Sales Invoice.

10.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that any of Your Data infringes or misappropriates such third party's intellectual property rights, or arising from Your use of the Services or Content in violation of the Agreement, the Documentation, Sales Invoice or applicable law (each a "**Claim Against Us**"), and You will indemnify Us from any damages, legal fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a settlement approved by You in writing of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defence and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.

11. LIMITATION OF LIABILITY

11.1. Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

12. TERM AND TERMINATION

12.1 Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

12.2. Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Sales Invoice. Except as otherwise specified in a Sales Invoice, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per unit pricing during any renewal term will be at the current applicable listed price unless We provide You notice of different pricing at least 60 days prior to the applicable renewal term. Except as expressly provided in the applicable Sales Invoice, renewal of promotional or one-time priced subscriptions will be at Our applicable list price in effect at the time of the applicable renewal.

12.3. Subscription Application Expiry Date. Applications will automatically reset Expiry dates via online connection to the axiapac.net.au web site in accordance with the associated Sales Invoice, and such updating of Expiry dates will be performed at regular intervals to ensure continuity of service. The application expiry date will be prorated in accordance to the subscription period as specified in the Sales Invoice upon receipt of Your payment for Our invoice.

12.4. Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.5. Continuity of Service In the event that We are unable to discharge our obligations under this agreement, You will be entitled to continued and uninterrupted operation of each Application in accordance with this agreement and the Application Expiry Date.

12.6. Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 12.4 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Sales Invoices after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.4, You will pay any unpaid fees covering the remainder of the term of all Sales Invoices. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.7. Your Data and Deletion of your Data. Once a subscription is terminated your data is archived and access to your data is no longer available to you. We will retain your data for 7 years. However, you can reactivate your subscription at any time and once again access your data by paying the applicable subscription fee. You can also advise us in writing that you wish to have your data permanently removed if you wish.

12.8. Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Customer Data Portability and Deletion," "Removal of Content and Non-Axiapac Applications," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

13. WHO ARE YOU CONTRACTING WITH, NOTICES AND GOVERNING LAW

13.1. **General.** This agreement is governed by the laws of and applicable in the state of Queensland and the federal laws of and applicable in Australia.

13.2. **You are Contracting With.** Axiapac Pty Ltd, ABN 53 128 231 023, An Australian Private Company, Limited by Shares, with registered office at Suite 10, Level 1, 3 Clunies Ross Court, Eight Mile Plains, Qld 4113.

13.3. **Delivery of Notices.** Notices must be posted by registered mail to Axiapac Pty Ltd, PO Box 4037, Eight Mile Plains, Qld 4113, Australia or delivered to Suite 10, Level 1, Brisbane Technology Park, 3 Clunies Ross Court, Eight Mile Plains, Qld 4113, Australia

13.4. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You.

13.5. **Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

13.6. **No Agency.** For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other Axiapac company. Subject to any permitted Assignment under Section 14.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

14. GENERAL PROVISIONS

14.1. **Export Compliance.** The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of Australia, the United States of America and other jurisdictions. Each party represents that it is not named on any Australian or United States of America government denied-party list. You shall not permit Users to access or use any Service or Content in an Australian or United States of America embargoed country or in violation of any Australian or United States of America export law or regulation.

14.2. **Anti-Corruption.** You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Us

14.3 **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Sales Invoices) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Sales Invoice, (2) this Agreement, and (3) the Documentation.

14.4. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (together with all Sales Invoices), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees allocable to the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.5. **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.6. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

14.7. **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.8. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.