



Fraxion e Subscription Agreement

This Fraxion e Subscription Agreement ("Agreement") is entered into by and between **Fraxion US, LLC** ("FRAXION, LLC"), with principal place of business at 600 1st Avenue, Suite 500E, Seattle, WA 98104 and the company or entity ("**Client**") that has executed an order form or proposal document (hereinafter referred to as the Order Form), evidencing the purchase of a subscription of Fraxion e and / or related services as of the last signature date thereto ("the **Effective Date**").

1. Grant of License: Subject to the terms of this Agreement, the software and documentation accompanying this Agreement whether on disk, in read only memory, on any other media or in any other form ("Fraxion e") are hereby licensed to Client by Fraxion, LLC on a limited, non-exclusive basis. FRAXION, LLC retains title to Fraxion e. This Agreement is effective until terminated pursuant to the terms of this Agreement. Client's right to use Fraxion e terminates immediately upon the material breach of any provision of this Agreement which is not timely cured within 30 business days of notice from FRAXION, LLC. Upon termination, at FRAXION, LLC' option, Client shall destroy or return Fraxion e, including copies in its possession or control at its own expense.

2. Permitted Uses and Restrictions/Description: Each licensing edition of Fraxion e authorizes the use of Fraxion e by no more than the number named Users, customizations and specified modules for the term specified below ("Subscription"), as indicated in Section 4 below. To use Fraxion e for additional named users, modules or for a longer Subscription term, Client must purchase additional licenses from FRAXION, LLC.

3. Services/Implementation: In addition to the Subscription, including maintenance under Section 5 below and where indicated in the Order Form, FRAXION, LLC will provide the following implementation services for Client's version of Fraxion e in substantial accordance with the following descriptions ("Services"):

A. Customizations. Customizations are not included and if needed shall be written up, quoted, and signed by the Parties in subsequent Appendices.

B. Remote Implementation Services

On mutually agreeable dates, FRAXION, LLC will perform an implementation of the Fraxion e software in reasonable accordance with the following:

i. **Pre-Implementation Planning**

Prior to the scheduled date for training, conduct preliminary phone conferences to prepare the client for the implementation. This includes discussions and planning for:

- a. Installation and connection to the Client's ERP system where applicable
- b. Setup and Configuration (train the trainer)
- c. Testing and Training on Workflow from Request > Approval > PO > Searching
- d. Miscellaneous
- e. Have Client fill out and return for review the Fraxion e implementation Worksheets to help facilitate the setup of Authorization Levels, Request Types, Users, Departments, and corresponding Account Codes

ii. **Initial Installation and Web Training on Setup and Configuration**

Remote Installation onto Client's server and connect to the Client's ERP system where applicable

- a. Open Web Browser
- b. Type http://<servername>/, or http://<website name> into the address bar
- c. Login to Fraxion e
- d. Test the functionality
- e. Test remote workstation access to the Fraxion e application.

iii. **Train the Trainer Training on System Admin Configuration**

Train Administrators on setting up:

- a. Departments and corresponding GL Accounts
- b. Authorization Levels and Approval Workflow
- c. Request Types
- d. Users and Other Company Preferences

iv. **Transactions**

Web Conference Transaction Training of Trainers on:

a. Entering transactions

- i. Select Requesting Department and Request Type
- ii. Attach documents
- iii. Review
- iv. Save Template if desired
- v. Review Approval Routing
- vi. Submit for Approval

b. Approving

- i. Approve
- ii. Edit (if turned on)
- iii. Reject
- iv. Require Change
- v. Request More Info

c. Creating POs

d. Searching/Reporting

e. Question and Answer

v. Incorporate Feedback and Q&A

Client will spend some time working in the system, entering data and any feedback or changes will be incorporated.

vi. Going Live

Wiping out Test Transactions, moving or re-pointing to live server going live and follow up

The above Implementation outline is high level and general. Actual timeline and number of hours for services needed will be subject to change based on an iterative process.

4. Cost and Payment Terms:

A: Cost

Client shall pay FRAXION, LLC the fees set out in the Order Form.

B: Payment Terms:

Client shall pay FRAXION, LLC for the above Subscription Total within 7 days of the **Effective Date** of this Agreement. Pricing is based on a 12-month prepaid Subscription from the Effective Date. Payment for any approved implementation services rendered by Fraxion LLC above the included hours as set out in the Order Form shall be made by Client within 30 days of invoice date. No refunds or cancellations are accepted. Additional purchases shall be under separately signed sales orders. Software shall be delivered electronically by way of download. Invoices will be sent and paid in USD. Payment shall be to Fraxion US, LLC, by either check to Post Office Box 845915, Los Angeles, California 90084-5915; or as otherwise directed on a duly authorized invoice sent by FRAXION, LLC to Client. Payments do not include any applicable Sales, Use or other taxes, which, if applicable, shall be additional and payable by Client. A 1 and ½ percent monthly services charge shall apply to any payments that are more than 30 days past due.

5. Maintenance and Support: The Maintenance and Support Plan includes options for the following during the Subscription:

- Bug Fix Patches
- Service Packs
- Access to the Fraxion e support help desk from 7:00 a.m. to 6:00 p.m., PST (excluding FRAXION, LLC holidays and weekends) for inquiry and issue resolution.

Delivery of updates will be made electronically by way of download. FRAXION, LLC shall have sole discretion to determine what constitutes a bug fix or periodic update for purposes of this Agreement.

The Maintenance and Support Plan does **not** include (any of the following which are available under separately signed orders):

- On-site Visits
- Training
- Data or Server Migration
- Customizations
- Additional optional modules

FRAXION, LLC shall provide Maintenance and Support for Client's version of Fraxion e during the Subscription period. FRAXION, LLC help desk staff will log and assign priorities for all support requests sent to esupport@fraxion.biz called in during support hours at (877) 727-9528. Requests will be handled according to the priority assigned to them. The following describes the general priority levels assigned to requests for Fraxion e issue resolution:

Priority	Definition	Response
Critical	A problem that affects the entire system	½ Business Day
High	A problem with known work around affecting single user or transaction	1 Business Day
Medium	A general service request or workaround solution	2 Business Days
Low	A request that does not require immediate attention	3 Business Days

FRAXION, LLC help desk staff will be able to provide more accurate resolution times based on assessment of the issue and communications with the Client. Client will be responsible for providing specific details on the issue with steps to reproduce the problem. Client may also be required to provide web conference or other remote access to its system for effective troubleshooting. In order to renew the Subscription, a renewal invoice will be provided by FRAXION, LLC and will be based on the then current retail price of the Subscription and will need to be paid by Client prior to expiration of the current Subscription period which will run for 1 year from the Effective Date. The Subscription amount on renewals may be increased by FRAXION, LLC in its discretion and Client's payment shall constitute acceptance. Maintenance and Support services, as well as access to the system are contingent on receipt and acceptance of fees paid by Client.

6. Restrictions: Unless terminated, this Agreement is Client's proof of license to exercise the rights granted herein and must be retained by Client. Client may not lease Fraxion e or transfer its rights under this Agreement.

7. Renewal/Termination: Client's user licenses and right to use the software under this Agreement shall be limited to the term of the Subscription, unless otherwise terminated by mutual agreement of the parties. Renewal under the terms of this Agreement will be based on full payment by Client of a renewal invoice to be provided by FRAXION, LLC prior to expiration of the current Subscription period. Upon termination, Client's access to the front-end user interface of the system will be disabled, but Client will retain access to the database and raw data. A read-only limited user version will be available at reduced subscription cost.

8. Limited Warranty/Disclaimer/Remedy: FRAXION, LLC will provide maintenance and support as indicated in Section 5 above, however, FRAXION, LLC offers no express or implied warranty guaranty for Fraxion e or any software, documentation, or services it provides to Client. Due to the complex nature of computer software, FRAXION, LLC does not warrant that Fraxion e, including the Services will be error-free, will operate without interruption or will be compatible with all equipment or software configurations. Nor does FRAXION, LLC warrant that functions contained within Fraxion e, including the Services, will meet Client's requirements or that Fraxion e will integrate with third party applications or hardware. FRAXION, LLC is not responsible for problems caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating system for which Fraxion e, including the services, or any upgrade, update or customization is procured, nor is FRAXION, LLC responsible for problems, including viruses or bug which may occur as a result of the use of Fraxion e in conjunction with software of third parties or with hardware which is incompatible with the operating system for which Fraxion e is being procured. Client acknowledges and agrees that Fraxion e software is provided at its sole risk and is provided "AS IS". OTHER THAN AS EXPRESSLY SET FORTH HEREIN, FRAXION, LLC SPECIFICALLY DISCLAIMS ANY WARRANTIES FOR FRAXION E (INCLUDING ANY CUSTOMIZATION AND IMPLEMENTATION SERVICES) EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE

AND NONINFRINGEMENT OF THIRD-PARTY RIGHTS. SOME JURISDICTIONS DO NOT ALLOW DISCLAIMERS ON CERTAIN IMPLIED WARRANTIES, SO THIS LIMITATION MAY NOT APPLY TO CLIENT. CLIENT MAY HAVE OTHER RIGHTS THAT VARY BY JURISDICTION.

9. Proprietary Rights: Client agrees to take all reasonably necessary steps to ensure that the provisions of this Agreement are not breached by Client or by any person under Client's control or in Client's service. Except as expressly permitted in this Agreement, Client shall not cause or permit any person other than an authorized employee of FRAXION, LLC to disassemble, reverse compile, decompile, modify, rent or lease, loan, sublicense, distribute, or create derivative works based upon the Fraxion e software in whole or in part. All copyright, patent, trade secret, trademark and other intellectual and proprietary rights in Fraxion e, including updates and customizations, are and shall remain the property of FRAXION, LLC.

10. Reproduction and Copyrights: Fraxion e is entitled to protection under United States Copyright Laws and International treaties. Client shall not copy, allow anyone else to copy, or otherwise reproduce any part of Fraxion e without the prior written consent of FRAXION, LLC. Client shall not remove or omit any copyright or other proprietary notices from Fraxion e. FRAXION, LLC retains ownership of Fraxion e, including all updates, customizations, and copies. Client shall not copy any documentation accompanying Fraxion e software, without advance written permission of FRAXION, LLC.

11. Limitation of Liability: IN NO EVENT, INCLUDING NEGLIGENCE, SHALL FRAXION, LLC, OR ITS DISTRIBUTORS OR DEALERS, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES (WITHOUT LIMITATION, LOST PROFITS OR LOST DATA), ARISING OUT OF THIS AGREEMENT, EVEN IF FRAXION, LLC HAS BEEN ADVISED OF OR MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY. NOR SHALL THE TOTAL LIABILITY OF FRAXION, LLC AND ITS DISTRIBUTORS AND DEALERS UNDER THIS AGREEMENT UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNT PAID TO FRAXION, LLC UNDER THIS AGREEMENT.

12. Independent Contractor: In performing services under this Agreement, FRAXION, LLC is acting as an independent contractor and neither party may make any commitments in the name of the other party unless authorized in writing.

13. Severability: Should any provision of this Agreement be held unenforceable; the remainder shall remain in full force and effect. In an action arising from this Agreement, the prevailing party is entitled to its reasonable attorney's fees and costs.

14. Confidentiality: Each party shall retain the Confidential Information of the other party in confidence and shall use and disclose it solely for the purpose of, and in accordance with, this Agreement. Each party shall only disclose Confidential Information of the other party to those of its employees and/or subcontractors with a need to know such Confidential Information and who have agreed in advance to protect and maintain the confidentiality of the Confidential Information to at least the same extent provided for in this Agreement. Each party shall use at least the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use or disclosure of the other party's Confidential Information. However, notwithstanding anything to the contrary herein, neither party shall be bound by any obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information of the other party, or any part thereof, which: a) was known to the receiving

party prior to disclosure; b) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement; c) was disclosed to the receiving party by a third party, provided that such third party is not in breach of any confidentiality obligation in respect of such information; or d) is independently developed by the receiving party. Notwithstanding the foregoing, FRAXION, LLC shall have the right to utilize Client's name and logo for purposes of indicating that Client is a customer of FRAXION, LLC in its marketing materials and web site.

15. Representations: This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes prior and contemporaneous understandings regarding such subject matter. Client expressly agrees that Client did not rely on any representation or warranty by anyone other than those expressly set forth in this Agreement. This Agreement may not be modified except by written instrument signed by the parties.

16. Jurisdiction: This Agreement shall be governed and construed by the laws of the State of Washington, in the U.S., and any dispute arising out of this Agreement shall be brought exclusively within King County, Washington in the United States. In any proceeding or action arising out of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs incurred.

17. Export Law Assurances: Client may not use or otherwise export or re-export Fraxion e except as authorized by the applicable laws of the United States and the State of Washington.

Acceptance: Deployment and use of software indicates that Client has read this Agreement, understands it, agrees to be bound by it and that this is the complete agreement between Client and FRAXION, LLC regarding the subject matter of this Agreement.