



1. HOSTING SUBSCRIPTION AGREEMENT

- 1.1. This Subscription Agreement ("Agreement") is entered into between Fraxion US, LLC ("Fraxion"), a Delaware Corporation, with principal place of business at 600 1st Avenue, Suite 500E, Seattle, WA 98104 and the company or entity ("Customer") that has executed an Order Form (as defined below) as of the last signature date ("Effective Date") on the Order Form that references this Agreement.
- 1.2. This Agreement incorporates by reference the attached Annexures which describe the following operational matters of the Hosted Application(s) (as defined below): Annexure A (Support), Annexure B (Service Level Agreement), Annexure C (Fraxion Release Types) and Annexure D (Maintenance Windows).
- 1.3. The terms and conditions of this Agreement govern the use of the Hosted Application(s) and the Website and are binding and enforceable against all persons that access the Hosted Application(s) and the Website or any part thereof.

2. DEFINITIONS

- 2.1. **"APP"** shall mean the Australian Privacy Act 1988 and National Privacy Principles and any amendments and successors thereto.
- 2.2. **"Business Day"** shall mean 8:00 a.m. to 6:00 p.m., Pacific Standard Time on any day other than a Saturday, Sunday or Fraxion Holiday.
- 2.3. **"CCPA"** means the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 et seq. and implementing regulations and any amendments and successors thereto.
- 2.4. **"Confidential Information"** means all confidential and proprietary information of a disclosing party disclosed by or on behalf of such party to the 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, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), business and marketing plans, technology and technical information, product designs, and business processes. Notwithstanding anything to the contrary, the Hosted Application(s) are deemed to be Confidential Information of Fraxion. Confidential Information shall 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 without restriction prior to its disclosure by the disclosing party and without breach of any obligation owed to the disclosing party; (iii) was independently developed by the receiving party without either use of or reference to any Confidential Information or breach of any obligation owed to the disclosing party; or (iv) is received

from a third party without restriction and without breach of any obligation owed to the disclosing party.

- 2.5. **"Customer Data"** means any data, information or material provided or submitted by Customer or on behalf of Customer to the Hosted Application(s) in the course of using the Hosted Application(s) and may include Personal Data.
- 2.6. **"Documentation"** means the product documentation relating to the operation and use of the Hosted Application(s), including technical program or interface documentation, operating instructions, update notes, and support knowledge base, as made available and updated from time to time by Fraxion.
- 2.7. **"GDPR"** means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council, and any amendments and successors thereto.
- 2.8. **"Hosted Application(s)"** means applications and associated content (as identified on an Order Form) to be provided by Fraxion to Customer and made accessible on the Website.
- 2.9. **"Hosting and Support Fees"** means the minimum monthly fees payable as set out in the Order Form for the provision of Hosting and Support Fees.
- 2.10. **"Intellectual Property/Intellectual Property Rights"** shall mean all present and future intellectual property rights, recognized in any jurisdiction in the world, including but not limited to patents, trademarks and logos (registered and unregistered in any form and/or nature whatsoever whether now used or adopted in the future), service marks, designs, design rights, copyright (including all copyright in any designs and computer programs), together with all related know-how, source codes, inventions, trade secrets, Confidential Information and all other rights of a similar character whether registered or capable of registration and all applications and rights to apply for protection of any of the same.
- 2.11. **"Material"** and **"Materially"** means, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable expert would attach importance to the event, condition, circumstance, effect, or item in evaluating the Party to which it relates and the transaction contemplated in this Agreement.
- 2.12. **"Order Form"** means an order form or proposal document mutually executed by the parties evidencing the purchase of subscription(s) to the Hosted Application(s), or in the case of a renewal of the Subscription Term, a quotation or invoice, specifying, among other things, the Subscription Term, the number of Users, the applicable fees, and / or the billing period. Each Order Form, once mutually executed, shall be governed by and become part of this Agreement, and is hereby incorporated by this reference.
- 2.13. **"Personal Data"** shall have the meaning ascribed to it in the European Data Protection Laws and other related data privacy legislation.
- 2.14. **"PIPEDA"** means the Canadian Personal Information Protection and Electronic Documents Act and any amendments and successors thereto.

- 2.15. **“Sensitive Personal Data”** or **“Special Personal Data”** (hereinafter referred to as “Sensitive Personal Data”) shall have the meaning ascribed to it in applicable data privacy legislation.
- 2.16. **“Subscription Term”** means the period(s) during which Customer is authorized to use the Hosted Application(s) pursuant to an Order Form.
- 2.17. **“Support”** means the Fraxion technical support as specified on the Order Form in accordance with the terms in Annexure A.
- 2.18. **“UK GDPR”** means the United Kingdom General Data Protection Act and any amendments and successors thereto.
- 2.19. **“Updates”** means Fraxion’s updates of the Hosted Application(s) for repairs, enhancements or new features applied by Fraxion to Customer’s instances, including updates to the Documentation as a result of such updates, at no additional fee during the Subscription Term. Updates shall not include additional functionality or upgrades to the Hosted Application(s) that Fraxion requires a separate charge from its other customers generally.
- 2.20. **“Users”** means employees of Customer and its representatives, consultants, contractors, subcontractors, or agents who are authorized to use the Hosted Application(s) and have been supplied unique user identifications and passwords by Customer.
- 2.21. **“Website”** means the website pages relating to the Hosted Application(s) accessible at www.fraxion.biz (and such other URLs as may be publicized from time to time), permitting the remote access and use of the Hosted Application(s).

In this Agreement, references to a “person” includes an individual, sole trader, partnership, body corporate, an unincorporated association of persons and any other legal entity; technical expressions shall have the relevant meaning commonly attributed to them in the computer software business sector in South Africa, provided that if the Parties cannot agree, the technical expression shall have the meaning ascribed to such expression in the technopedia internet dictionary; the use of the word “including” and similar expressions will be construed as illustrative and not exhaustive; notwithstanding the fact that hyperlinks in this Agreement to notices and legislation should be deemed part of this Agreement, insofar as they are applicable and have not been excluded by this Agreement, the fact that some or all of the hyperlinks may be non-operational from time to time shall not play a role in determination of the validity and interpretation of this Agreement; any reference to the word days will be construed as Business Days.

3. FRAXION’S OBLIGATIONS

- 3.1. Fraxion will make available to Customer, and Customer is authorized to use, the Hosted Application(s) during the Subscription Term as set forth in an applicable Order Form and herein for its internal business purposes in accordance with the Documentation.
- 3.2. Should the Customer require ancillary services, these shall also be set out in an Order Form.

- 3.3. Fraxion shall:
- 3.3.1. provide the level of support specified in the Order Form and in accordance with Annexure A;
 - 3.3.2. provide Updates at no additional charge as part of Customer's subscription during the Subscription Term in accordance with Annexure A;
 - 3.3.3. make the Hosted Application(s) available in accordance with Annexure A;
 - 3.3.4. maintain a written information security program of policies, procedures and controls as set out in the "Fraxion Data Policy and Privacy Policy"; and
 - 3.3.5. unless notification is restricted by law, report to Customer's designated support contacts any unauthorized acquisition, access, use, disclosure or destruction of Personal Data ("**Breach**") promptly without undue delay after Fraxion determines that a Breach has occurred. Fraxion shall unless prohibited by law, share information about the nature of the Breach that is reasonably requested by Customer to enable Customer to notify affected individuals, government agencies and/or credit bureaus. Customer has sole control over the content of Personal Data that it enters into the Hosted Application(s) and is responsible for determining whether to notify impacted individuals and the applicable regulatory bodies or enforcement commissions and for providing such notice.

4. CLIENT'S USE OF THE HOSTED APPLICATION(S)

- 4.1. Customer is responsible for activity occurring under its User accounts and shall ensure that it and its Users abide by all applicable laws, treaties and regulations applicable to Customer's use of the Hosted Application(s).
- 4.2. Customer shall:
- 4.2.1. notify Fraxion promptly of any unauthorized use of any password or account or any other known or suspected breach of security;
 - 4.2.2. notify Fraxion promptly and use reasonable efforts to promptly stop any unauthorized use, copying, or distribution of the Hosted Application(s) that is known or suspected by Customer or its Users;
 - 4.2.3. not impersonate another Fraxion user or provide false identity information to gain access to or use the Hosted Application(s); and
 - 4.2.4. restrict each User account to only one authorized User at a time.
- 4.3. Customer shall not
- 4.3.1. license, sublicense, sell, resell, transfer, rent, lease, assign (except as provided for in in this agreement), distribute, disclose, or otherwise commercially exploit or make available to any third party the Hosted Application(s);
 - 4.3.2. copy, modify or make derivative works based upon the Hosted Application(s);

- 4.3.3. frame or mirror the Hosted Application(s) on any other server or device;
- 4.3.4. access the Hosted Application(s) for any benchmarking or competitive purposes or use the Hosted Application(s) for any purpose other than its own internal use,
- 4.3.5. decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Hosted Application(s) (except to the extent reverse engineering restrictions are prohibited by applicable law),
- 4.3.6. remove, obscure or modify a copyright or other proprietary rights notice in the Hosted Application(s);
- 4.3.7. use the Hosted Application(s) to send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material that violates third party privacy rights;
- 4.3.8. use the Hosted Application(s) to create, use, send, store, or run material containing software viruses, worms, Trojan horses or otherwise engage in any malicious act or disrupt the security, integrity or operation of the Hosted Application(s);
- 4.3.9. attempt to gain or permit unauthorized access to the Hosted Application(s) or its related systems or networks;
- 4.3.10. use the Hosted Application(s) other than in compliance with all applicable laws and regulations; or
- 4.3.11. permit or assist any other party (including any User) to allow named User subscriptions to be shared or used by more than one User but may be reassigned to User profiles to new Users replacing former Users who no longer require use of the Hosted Application(s). Unless otherwise specified in the relevant Order Form, the replacement User shall be under the same Subscription Term of the original User.
- 4.4. Additional Users may be purchased pursuant to the parties signing an Order Form and unless otherwise specified in the relevant Order Form, the Subscription Term of additional Users shall be coterminous with the Subscription Term in effect at the time the additional Users are added.
- 4.5. The intended purpose of the Hosted Application(s) is to optimize Customer's corporate spend management processes and Customer acknowledges and agrees that use of the Hosted Application(s) does not require Customer to provide any Sensitive Personal Data to or through the Hosted Application(s).
- 4.6. Sensitive Personal Data should not be stored by any Hosted Application(s), and Fraxion shall have no liability to Customer or its suppliers, Users or any other party related to any Sensitive Personal Data.
- 4.7. Customer shall not (and shall ensure that its suppliers and Users do not) upload, provide or submit any Sensitive Personal Data to the Hosted Application(s).
- 4.8. Fraxion may upon 30 days' notice suspend all or portion of Customer's or its supplier's access to the Hosted Application(s) if Customer or its supplier has breached the restrictions in this Clause.
- 4.9. Fraxion shall provide Customer with reasonable prior notice to cure any breach of this Clause 4 before exercising any suspension under this Clause 4.

- 4.10. Customer agrees that Fraxion shall have no liability, obligation or responsibility for any correspondence or purchase between Customer and any third-party supplier.
- 4.11. Customer shall indemnify Fraxion for any loss it might suffer as a result of Customer or Users entering into any correspondence or purchase with a third-party supplier arising from no fault of Fraxion..

5. ORDERING AND FEES

- 5.1. Customer shall pay the fees set out in the Order Form.
- 5.2. All payment obligations are non-cancelable, and all amounts paid are non-refundable except as otherwise specified in this Agreement.
- 5.3. Fraxion shall issue invoices to Customer as specified in the Order Form and Customer agrees to pay such amounts as specified in the Order Form.
- 5.4. If any such invoice is more than 30 days overdue Fraxion may, without limiting its other rights and remedies, suspend the Hosted Application(s) until such invoice is paid in full.
- 5.5. Fraxion shall provide prior written notice to Customer of the payment delinquency before exercising any suspension right.
- 5.6. Any amount that is more than 30 days overdue by Customer to Fraxion shall carry interest compounded monthly at the lower of: (1) the Prime Rate plus 2%; or (2) the highest rate permitted by applicable law, compounded monthly, from the due date until payment thereof has been received by Fraxion in full.
- 5.7. Customer agrees to pay Fraxion in the currency specified on the Order Form.
- 5.8. Customer agrees to provide Fraxion with complete and accurate billing and contact information and to update this information promptly upon any change to it.
- 5.9. If Customer believes its bill is incorrect, Customer must contact Fraxion in writing within 30 days of the date of the invoice in question to be eligible to receive an adjustment or credit, and after such 30 day period Customer's right to dispute such invoice shall be deemed waived.
- 5.10. Should Customer choose to discontinue paying the fees or using the Hosted Application(s) for any reason other than as set out in this agreement, Fraxion shall have no obligation to refund any or all of any amounts paid in advance by the Customer including but not limited to subscription, support, maintenance or service fees.
- 5.11. Fraxion's quoted fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, including for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes") and Customer shall be responsible for payment of all Taxes associated with this Agreement and all Order Forms.
- 5.12. If any deduction or withholding is required by law, Customer shall notify Fraxion and shall pay Fraxion any additional amounts necessary to ensure that the net amount that Fraxion receives, after any deduction and withholding, equals the amount Fraxion would have received if no deduction or withholding had been required.

- 5.13. Customer shall also provide to Fraxion documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.
- 5.14. It is recorded that the Hosting and Support Fees have been calculated after having taken into account the average costs incurred by Fraxion for hosting a typical Fraxion customer.
- 5.15. If at any time after commencement of this Agreement there is any Material increase in the hosting costs referred to in Clause 5.14 or any other third party costs of providing or maintaining this Agreement, Fraxion shall at its discretion, and upon giving prior written note to Customer, be entitled to increase the Hosting and Support Fees in order to recover such increased cost.

6. INTELLECTUAL PROPERTY

- 6.1. As between Fraxion and Customer, all rights, title, and interest in and to all Intellectual Property Rights in the Hosted Application(s) (including all derivatives, modifications and enhancements thereof) are and shall be owned exclusively by Fraxion or its suppliers or licensors as the case may notwithstanding any other provision in this Agreement or Order Form.
- 6.2. This Agreement is not a sale and does not transfer to Customer any rights of ownership in or related to the Hosted Application(s).
- 6.3. The Fraxion name, logo and product names associated with the Hosted Application(s) are trademarks of Fraxion, and no right or license is granted to use them, other than in the fulfilment of the respective Parties rights and obligations in terms of the Agreement.
- 6.4. All rights not expressly granted to Customer are reserved by Fraxion.
- 6.5. Fraxion alone shall own all rights, title and interest in and to any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating thereto.
- 6.6. As between Customer and Fraxion, Customer or its Users exclusively owns all rights, title and interest in and to all Customer Data.
- 6.7. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to use all Customer Data, and hereby warrants that that it has and will have all rights and consents necessary to allow Fraxion to use all such data as contemplated by this Agreement, subject to the terms set out in Clause 7
- 6.8. Customer hereby grants to Fraxion a royalty-free, fully paid, non-exclusive, non-transferable (except as set out in this Agreement), sub-licensable, worldwide right to use and process Customer Data solely for the purpose of providing to Customer the services offered by the Hosted Application(s) and any other activities agreed to by Customer.

7. DATA AND PRIVACY

- 7.1. The Parties hereby undertake that they are familiar and undertake to comply with the Fraxion Data Policy and Privacy Policy and, where applicable, the provisions of the following: UK GDPR, GDPR, APP, PIPEDA, CCPA and any other existing or newly enacted applicable laws regarding privacy and any amendments and successors to the foregoing, in their dealings with Personal Data. If a particular privacy law or guideline does not apply to the Customer, not all terms of this Data and Privacy Policy may be relevant to them.
- 7.2. Customer acknowledges that any Personal Data (as defined in the various data protection laws and regulations) collected or received from Customer by Fraxion shall be processed in accordance with applicable legal requirements.
- 7.3. The Parties acknowledge and agree that some Customer Data provided by the Customer to Fraxion, or to which Fraxion may become privy pursuant to this Agreement may constitute Personal Data and where applicable is the Intellectual Property belonging to the Customer as referred to in Clause 6.
- 7.4. Where one Party (the **"Data Controller"**) supplies Personal Data to the other Party (the **"Data Processor"**), the Data Processor will:
 - 7.4.1. ensure that such Personal Data is only used for purposes authorized by the Data Controller and in terms of this agreement;
 - 7.4.2. notify the Data Controller of any request it receives from third parties for access to or changes to the Personal Data;
 - 7.4.3. not transfer the Personal Data in any manner to any third party other than in accordance with the terms of this Agreement;
 - 7.4.4. not send Personal Data outside of the hosting environment without prior authorization from the Data Controller other than as set out in this Agreement;
 - 7.4.5. comply with all applicable laws, policies and procedures relating to the protection, storage, handling, privacy, processing and retention of Personal Data as well as the destruction of Personal Data;
 - 7.4.6. take appropriate and reasonable technical and organizational security measures to prevent the loss of, damage to or unauthorized destruction of Personal Data, and the unlawful access to or processing of Personal Data. The measures taken must at all times be at least of a minimum standard required by all applicable laws and be of a standard no less than the standards which are in compliance with commercially reasonable practices for the protection, control and use of data;
 - 7.4.7. take steps to identify all reasonably foreseeable internal and external risks posed to data under its possession or control and establish and maintain appropriate safeguards against any risks identified. The receiving party shall regularly verify that the safeguards are effectively implemented, and keep a record of such verification. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards;

- 7.4.8. provide a level of security appropriate to the harm that might result from any unauthorized or unlawful processing or accidental loss, destruction or damage to the Personal Data and also to the nature of the Personal Data being protected. Any act or omission that compromises the security, confidentiality or integrity of Personal Data or the safeguards used to protect the security, confidentiality or integrity of Personal Data, or a receipt of or a complaint in respect of the security practices of the Data Processor or a breach or alleged breach of any of the undertakings imposed on the Data Processor by this agreement or of obligations imposed on the Data Processor in terms of legislation, will be deemed to be a breach for purposes of this Agreement. In the event of breach or suspected breach, the Data Processor will notify the Data Controller, within 7 (seven) days of becoming aware of the breach;
- 7.4.9. ensure, if required, the necessary audit procedures are in place to deal with the requirements of all applicable data privacy legislation and this clause; and
- 7.4.10. implement any other measures and procedures to ensure that the Data Processor's obligations in terms of this clause and all applicable data privacy legislation are met.
- 7.5. Fraxion as the Hosted Application provider for Customers is the Data Processor for Customers (who act as Data Controllers).
- 7.6. The Data Controller warrants that it has obtained all necessary consents, where required, from its suppliers, employees or any other third parties when requesting their Personal Data.
- 7.7. The Data Processor warrants, represents and undertakes that it shall ensure that all its systems and operations which it uses to provide the Services including all systems on which Personal Data is processed as part of providing the Hosted Application(s) and Website, shall at all times be of a minimum standard required by all applicable laws and be of a standard no less than the standards which are in compliance with the commercially reasonable practices for the protection, control and use of data.

8. CONFIDENTIALITY

- 8.1. The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees, consultants, directors, professional advisers or agents directly involved in the performance of this Agreement.
- 8.2. The Parties shall prevent disclosure of the Confidential Information, except as may be required by law.
- 8.3. Within one (1) month of the termination of this Agreement for whatever reason, the recipient of Confidential Information shall return same, or at the discretion of the owner thereof, destroy such Confidential Information, and shall not retail copies, samples or excerpts thereof, save in the case of

Customer who may retain such Confidential Information as it may be required to retain pursuant to applicable law, rule or regulation.

8.4. It is recorded that the following information will, for the purposes of this Agreement, not be considered to be Confidential Information:

8.4.1. Information known to either of the Parties prior to the date that it was received from the other Party; or

8.4.2. Information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or

8.4.3. Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such information.

8.5. For the purpose of this Clause 8, the Party who makes the allegation carries the burden of proof thereof.

8.6. Fraxion shall be entitled to publish any announcement of transactions between the Parties through any of the media and shall be entitled, from time to time, to publish notification of the existence of this Agreement in any list indicating the identity of customers of Fraxion.

9. WARRANTIES

9.1. Fraxion warrants that during the Subscription Term:

9.1.1. Customer's instances of the Hosted Application(s) shall substantially conform to the Documentation;

9.1.2. the functionality of the Hosted Application(s) at the time of the Order Form shall not materially decrease during the Subscription Term;

9.1.3. it will comply with all applicable laws;

9.1.4. it will maintain all required licenses, consents, and other rights required to provide the Hosted Application(s) and perform its obligations under the Agreement;

9.1.5. its use of any third-party software within the Hosted Application(s) complies with applicable laws;

9.1.6. where it uses any open source software, Customer will not become subject to the terms of any open-source license or otherwise become subject to any obligation to provide any source code relating to its systems or software to any third party;

9.1.7. commercially reasonable steps will be taken to ensure that the Hosted Application(s) remain free from viruses and malicious programs or code;

9.1.8. services will be performed using reasonable skill and care and in accordance with good industry practice;

- 9.1.9. an adequate number of appropriately trained, skilled and experienced personnel will be used to provide the Hosted Application(s) and deliver services in accordance with the terms of the Agreement; and
 - 9.1.10. that to the best of their knowledge and at the time of entering into the Agreement, and while exercising reasonable care, the provision (or the receipt or use by Customer and/or any authorized third party in accordance with the terms of the Agreement) of the Hosted Application(s) will not infringe the Intellectual Property Rights of any person.
- 9.2. To submit a warranty claim under this Clause, Customer shall
 - 9.2.1. reference this Clause; and
 - 9.2.2. submit a support request to resolve a Material non-conformity as provided in Annexure A hereto.
- 9.3. If the Material non-conformity persists without relief for more than thirty (30) days after written notice of a warranty claim provided to Fraxion under this Clause, then Customer shall notify Fraxion of a dispute and the process set out in Clause 13 shall be followed.
- 9.4. Notwithstanding the foregoing, this warranty shall not apply to any non-conformity due to any modification of or defect in the Hosted Application(s) that is made or caused by someone other than Fraxion or Fraxion's associates.

10. INDEMNIFICATION

- 10.1. Subject to this Agreement, Fraxion shall:
 - 10.1.1. defend, indemnify and hold harmless Customer, its officers, directors and employees against any third-party suit, claim, or demand (each a "Claim") that alleges the Hosted Application(s) used in accordance with this Agreement and the applicable Order Form infringe any patent, copyright, trademark or misappropriate any trade secret of, such third-party; and
 - 10.1.2. pay any court-ordered award of damages or settlement amount to the extent arising from such Claims.
- 10.2. Notwithstanding the foregoing, if Fraxion reasonably believes that Customer's use of any portion of the Hosted Application(s) is likely to be enjoined by reason of any Claims then Fraxion may, at its expense and in its sole discretion:
 - 10.2.1. procure for Customer the right to continue using the Hosted Application(s);
 - 10.2.2. replace the same with other products of substantially equivalent functions and efficiency that are not subject to any Claims of infringement; or
 - 10.2.3. modify the applicable Hosted Application(s) so that there is no longer any infringement, provided that such modification does not Materially and adversely affect the functional capabilities of the Hosted Application(s) as set out herein or in the applicable Order Form.

- 10.3. If any of the remedies set out in Clause 10.2 above are not available on commercially reasonable terms in Fraxion's judgment, Fraxion may terminate the affected Hosted Application(s).
- 10.4. The foregoing indemnification obligation of Fraxion shall not apply:
- 10.4.1. if the Hosted Application(s) are modified by any party other than Fraxion, but solely to the extent the alleged infringement is related to such modification;
 - 10.4.2. the Hosted Application(s) are combined with other non-Fraxion products, applications, or processes not authorized by Fraxion, but solely to the extent the alleged infringement is related to such combination;
 - 10.4.3. to the extent the Claim arises in connection with any unauthorized use of the Hosted Application, or use that is not in compliance with all applicable laws and related Documentation;
 - 10.4.4. to any third-party products, processes or materials that are not provided by Fraxion; or
 - 10.4.5. to any Claims arising as a result of the content of the Customer Data.
- 10.5. This Clause 10 sets forth Fraxion's sole liability and Customer's sole and exclusive remedy with respect to any claim of Intellectual Property infringement.
- 10.6. Customer shall defend Fraxion, its officers, directors, and employees against any expense, liability, loss, damage or costs (including reasonable attorneys' fees), each to the extent payable to a third party, incurred in connection with Claims made or brought against Fraxion by a third party arising from or relating to the Customer Data or a dispute between Customer and its suppliers arising from Customer's use of the Hosted Application(s) to exchange information with or conduct business with such supplier.
- 10.7. To the extent affected by the following, Customer's indemnification obligation shall not apply:
- 10.7.1. if the Customer Data is modified by Fraxion or by any party under Fraxion's control, without Customer's authorization but solely to the extent the Claim is caused by such modification; or
 - 10.7.2. to any use or disclosure of the Customer Data by Fraxion not contemplated by this Agreement.
- 10.8. Each party's indemnity obligations are subject to the following:
- 10.8.1. the indemnified party shall promptly notify the indemnifier in writing of any Claims;
 - 10.8.2. the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to any Claims (provided that the indemnifier may not settle any Claims that require the indemnified party to admit any civil or criminal liability or incur any financial obligation without the indemnified party's consent, which consent shall not be unreasonably withheld); and
 - 10.8.3. the indemnified party shall cooperate fully to the extent necessary at the indemnifier's cost in such defenses and settlement.

11. DISCLAIMER AND LIMITATIONS OF LIABILITY

- 11.1. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FRAXION DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR GUARANTY, AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES PROVIDED OR OFFERED HEREUNDER.
- 11.2. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES PROVIDED TO CLIENT HEREUNDER ARE PROVIDED STRICTLY ON AN "AS IS" BASIS AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 11.3. TO THE EXTENT PERMITTED BY LAW, FRAXION'S TOTAL AND AGGREGATED LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER BASED ON CONTRACT, DELICT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CLIENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER THIS AGREEMENT.
- 11.4. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT.
- 11.5. THE LIMITATIONS IN THIS CLAUSE SHALL NOT APPLY TO CLIENT'S OBLIGATION TO PAY FEES LEGALLY OWED UNDER THIS AGREEMENT, EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR INFRINGEMENT BY CLIENT OF FRAXION'S INTELLECTUAL PROPERTY RIGHTS.
- 11.6. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THE AGREEMENT FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), REGARDLESS OF THE CAUSE, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.7. NOTHING HEREIN SHALL LIMIT A PARTY'S LIABILITY IN AN ACTION FOR THE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

12. DURATION AND TERMINATION

- 12.1. The Agreement commences on the Effective Date and continues until all Order Forms subject to this Agreement have expired or terminated, unless this Agreement is earlier terminated in accordance with this Clause 12.
- 12.2. User subscriptions commence on the subscription start date specified in the relevant Order Form and continue for the Subscription Term specified therein.

- 12.3. Unless otherwise provided in the Order Form, user subscriptions shall automatically renew for additional periods of one year on the same terms unless either party gives the other notice of non-renewal or a new price quote at least 30 days prior to the end of the relevant Subscription Term.
- 12.4. A party may immediately terminate this Agreement for cause:
- 12.4.1. upon 30 days written notice of a Material breach to the other party if such breach remains unresolved at the expiration of such period; or
 - 12.4.2. upon the occurrence of one of the following events:
 - 12.4.3. if the other party admits in writing its inability to pay its debts as they become due, or such party becomes unable to pay its debts as they become due;
 - 12.4.4. any trustee, receiver, custodian, or liquidator of the other party or of all or any substantial part of its properties or assets is appointed without the consent or acquiescence of such party, and such appointment remains unvacated and unstayed for a period of sixty (60) consecutive days from the date of such appointment;
 - 12.4.5. a court of competent jurisdiction enters an order, judgment, or decree approving a petition filed against the other party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal, state, or other statute, law, or regulation, and such order, judgment, or decree remains unvacated and unstayed for a period of sixty (60) consecutive days from the date of entry thereof; or
 - 12.4.6. if the other party voluntarily or involuntarily applies for insolvency or any other proceeding relating to insolvency, bankruptcy, receivership, liquidation or assignment for the benefit of creditors that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors.
- 12.5. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Fraxion prior to the effective date of termination.
- 12.6. Upon Customer's written request within 30 days before the effective date of termination, and provided all amounts due and payable to Fraxion have been paid in full and cleared in Fraxion's bank account, and upon payment by Customer of a fee determined by Fraxion for doing so, Fraxion shall make available for download a file of Customer Data in comma separated value (.csv) format along with attachments in their native format.
- 12.7. Fraxion shall have no obligation to maintain or provide any Customer Data after the effective date of termination and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.
- 12.8. Upon termination of the Agreement, at Customer's election, Fraxion shall provide transition services to facilitate the orderly and complete transfer of the Customer Data to Customer or to any replacement provider designated by Customer ("**Transition Services**"), provided that the scope and fees of the Transition Services shall be mutually agreed to by the parties in a statement of work prior to commencing Transition Services.

- 12.9. Notwithstanding the provisions of this clause, in no event shall Fraxion be required to disclose any of its Confidential Information or provide a license under any of its Intellectual Property to Customer or any third party as part of the Transition Services.
- 12.10. For the avoidance of doubt, Customer shall continue to pay the subscription fees for the use of the Hosted Application(s) during the transition period as well as any other fees due.
- 12.11. Upon expiration or termination of the Agreement, Clauses 1 (Definitions), 5 (Ordering), 6 (Intellectual Proprietary Rights), 7 (Data and Privacy), 8 (Confidential Information), 10 (Indemnification), 11 (Disclaimer and Limitations of Liability), 12 (Duration; Termination), and 14 (General Provisions) of this Agreement along with any other clause that by its nature or to give proper effect to its terms must survive shall survive.

13. DISPUTE RESOLUTION

- 13.1. In the event that a genuine dispute, difference or grievance, shall arise between the parties then such dispute shall be handled in accordance with Clauses 13.2 and 13.3 below, subject to the condition that, where the Customer fails to make any payment or fee due in terms hereof, Fraxion shall, at its sole discretion, be entitled to approach any court having jurisdiction for the appropriate relief and which may include, but is not limited to, summary or default judgment.
- 13.2. The parties shall first use reasonable endeavors to resolve the dispute in good faith negotiations. This process shall entail one of the parties inviting the other, in writing, to meet, either in person or by means of telephone or video conferencing facilities, and to attempt to resolve the dispute within 7 (seven) days from the date of written invitation. In the event that such negotiations do not result in a mutually acceptable resolution within 7 (seven) days of said negotiations, the dispute shall be handled in accordance with Clause 13.3 below.
- 13.3. Subject to any dispute, difference or grievance, of any nature whatsoever, arising out of or relating to this Agreement, its termination or cancellation not being resolved in accordance with Clause 13.2 the dispute shall be referred to and finally resolved in accordance with the International Arbitration Act where applicable, by written notice by either party provided that:
- 13.3.1. The parties specifically agree that the arbitration shall take place in Seattle, Washington and shall be conducted in the English language.
- 13.3.2. The arbitration shall be adjudicated by an arbitrator or arbitrators, as the case may be, who shall be a practicing attorney or advocate of at least 15 years' standing.
- 13.3.3. The parties shall, within 7 (seven) days after the notice referred to in Clause 13.3, each be entitled to nominate a preferred candidate to act as a single arbitrator.

- 13.3.4. The parties shall be entitled to, where both parties deem it to be necessary, appoint a panel of three arbitrators, in which case each party shall nominate an arbitrator who, together, shall appoint a third arbitrator.
- 13.3.5. Should the parties or the nominated arbitrators, in the case of Clause 13.3.4, fail to appoint an arbitrator by agreement, within 7 (seven) days of nomination of their candidates, the appointment of the arbitrator shall be referred to the Judicial Arbitration and Mediation Services, Inc ("JAMS") who shall, in its own discretion, appoint a suitable arbitrator or arbitrators, as the case may be, and who shall act as appointing authority only.
- 13.3.6. It is specifically recorded that, in accordance with the applicable arbitration rules, the arbitration may proceed in the absence of either party where both parties have received adequate notice of such proceedings, and an award may be made against the party notwithstanding their absence from said proceedings.
- 13.4. This Clause 13 shall not prevent Fraxion from approaching any court or other judicial forum in any country having appropriate jurisdiction to obtain timely interim or other relief in cases of urgency.

14. GENERAL PROVISIONS

- 14.1. Each party shall comply with all applicable laws and government regulations, including the export laws and regulations of the State of Washington, in the United States, in connection with providing and using the Hosted Application(s).
- 14.2. Without limiting the foregoing:
- 14.2.1. each party represents that it is not named on any government list of persons or entities prohibited from receiving exports, and
 - 14.2.2. Customer shall not and shall ensure that Users do not violate any export embargo, prohibition, restriction or other similar law in connection with this Agreement.
- 14.3. Except as provided elsewhere in this Agreement, either party may give notice by written communication sent by next-day mail delivered by a nationally recognized delivery service:
- 14.3.1. if to Customer, to Customer's address on record in Fraxion's account information or
 - 14.3.2. if to Fraxion, to 600 1st Avenue, Suite 500E, Seattle, WA 98104 addressed to the attention of: Legal Department.
 - 14.3.3. In addition, Fraxion may send Customer notice by written communication to the electronic address then on file associated with Customer's account.
- 14.4. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing, or in the case of electronic mail from Fraxion, transmission.
- 14.5. Fraxion shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any third party, upon reasonable notice to Customer.

- 14.6. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 14.7. This Agreement shall be governed by the laws of the State of Delaware, in the United States.
- 14.8. Each Party warrants to the other Party that it has the power, authority and legal right to enter into and perform this Agreement and that this Agreement has been duly authorized by all necessary actions of its directors, trustees and members, as the case may be, and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.
- 14.9. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement shall be brought exclusively within King County, Washington in the United States.
- 14.10. The Agreement comprises the entire agreement between Customer and Fraxion and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.
- 14.11. In the event of any conflict between this Agreement and the Order Form, the Order Form shall govern as to the specific conflict.
- 14.12. No text, alternate terms, conflicting terms, or information set forth on any other purchase order, pre-printed form or document except the Order Form shall add to, modify, amend, waive, or vary the terms and conditions of this Agreement.
- 14.13. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
- 14.14. Customer agrees that Customer's purchase of any subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Fraxion with respect to future functionality or features. No joint venture, partnership, employment, or agency relationship exists between Customer and Fraxion as a result of the Agreement or use of the Hosted Application(s).
- 14.15. The failure of a party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision.
- 14.16. No party shall have any claim or right of action arising from any undertaking, representation or warranty in relation to the subject matter hereof not included in this agreement.
- 14.17. No agreement to modify, amend, waive, vary, add to or cancel this Agreement shall be of any force and effect unless reduced to writing and signed by authorized representatives of the Parties to this Agreement.
- 14.18. Insofar as more than one contract is entered into in this Agreement, each such contract shall be deemed to be divisible from the other(s) in all respects.
- 14.19. This Agreement may be executed in counterparts and by each Party in a separate counterpart, each of which so executed shall be an original, but all of which shall together constitute one and the same instrument.

- 14.20. Save to the extent otherwise provided for in this Agreement, each Party shall bear its own costs and that of its advisors in respect of this Agreement and in respect of the implementation of the steps contemplated in this Agreement.
- 14.21. All legal costs, which will include attorney and own customer costs, incurred by one Party arising out of the breach of any provisions of this Agreement by the other Party/ies, shall be borne by the Party in breach.
- 14.22. To the extent that Fraxion software is provided to, or on behalf of the United States of America, its agencies and/or instrumentalities ("US Government"), such software is provided with Restricted Rights. Use, duplication and/or disclosure is subject to restrictions as set forth as set forth in subparagraph (c)(i)(ii) of the Rights in Technical Data and Computer software clause at DFARS 252.227-7013 of subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Fraxion US, LLC. 600 1st Avenue, Suite 500E, Seattle, WA 98104

15. FORCE MAJEURE

- 15.1. Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves:
 - 15.1.1. that the failure was due to an impediment beyond its reasonable control;
 - 15.1.2. that it could not reasonably be expected to have taken the impediment and its effects upon the party's ability to perform into account at the time of the conclusion of this Agreement; and
 - 15.1.3. that it could not reasonably have avoided or overcome the impediment or at least its effects ("**Force Majeure Event**").
- 15.2. A Force Majeure Event, as aforesaid, may result from events such as the following, this enumeration not being exhaustive:
 - 15.2.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;
 - 15.2.2. natural disasters such as violent storms, cyclones, earthquakes, tidal floods, destruction by lightning;
 - 15.2.3. explosions, fires, destruction of machines, factories and of any kind of installation;
 - 15.2.4. boycotts, strikes and lockouts of all kinds, go-slows, occupation of factories and premises and work stoppages;
 - 15.2.5. acts of authority, whether lawful or unlawful, apart from acts from which the party seeking relief has assumed the risk by virtue of any other provisions of this Agreement.
- 15.3. For the purposes of this clause Force Majeure Event does not include lack of authorizations, licenses, permits or approvals necessary for the performance of this Agreement and to be issued by the appropriate public authority.
- 15.4. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the party seeking relief gives Notice of the Force Majeure Event relied upon and shall terminate on the date upon which such Force Majeure Event ceases to exist; provided that

if such Force Majeure Event continues for a period of more than sixty (60) days either of the Parties shall be entitled to terminate this Agreement.

- 15.5. The party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.

ANNEXURE A - SUPPORT

The following describes the technical support services ("Technical Support"). Fraxion shall provide the support acquired by Customer ("Support") as stated on the Order Form. The following terms may be updated from time to time, however, for each Order Form, the terms effective as of the execution of the Order Form shall apply for the duration of the applicable Subscription Term.

1. **Scope.** The purpose of Technical Support is to address defects in the Hosted Application(s) that prevent them from performing in substantial conformance with the applicable Documentation. A resolution to such a defect may consist of a fix, workaround or other relief reasonably determined by Fraxion's Technical Support staff.
2. **Online Support Portal.** The Support Portal includes an online knowledge base, best practices for use of the Hosted Application(s), and a portal for the Designated Support Contacts to submit support tickets.
3. **Normal Support Hours and Contact Information.** Support will be provided on Business Days. The Fraxion Support Centre can be contacted by email at primesupport@fraxion.biz.
4. **Live Phone Support.** Fraxion personnel are available to provide Technical Support to Customer, to the Designated Support Contact.
5. **Severity Levels.** Each support ticket shall be categorized into one of the following severity levels.

Severity	Definition
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Severity 1	Critical Business Impact: The Hosted Application(s) fail so that there is a complete loss of service or resources for which no workaround (including a manual workaround) exists and work cannot reasonably continue.
Severity 2	Serious Business Impact: The Hosted Application(s) are causing significant or degraded loss of service or resources. A major product flaw, or a minor product flaw without a workaround (including a manual workaround).
Severity 3	Some Business Impact: The Hosted Application(s) cause minor loss of service or resources (in other words some users can work). A product flaw with a workaround (including a manual workaround).
Severity 4	Minor Business Impact: Work is not being impeded at this time, and most of the users can use the Hosted Application. Information is requested or reported, or an isolated problem has occurred.

6. Support Response Times

<i>Response Times</i>	
Severity 1	1 Day
Severity 2	2 Days
Severity 3	At Fraxion's discretion
Severity 4	At Fraxion's discretion

7. Customer Responsibilities

- 7.1. Customer shall designate no more than one Hosted Application(s) administrator ("Designated Support Contact") who may contact and interact with Fraxion in connection with Technical Support requests.
- 7.2. Customer's Designated Support Contact shall answer questions and resolve issues as needed when they arise from other Users of the Hosted Application(s).
- 7.3. Customer's Designated Support Contact enters support request tickets, works through Technical Support issues with Fraxion, and takes action as needed to implement the resolution to the issue.
- 7.4. Customer agrees that Fraxion may communicate and follow instructions to make changes to Customer Data and/or Customer's instances, with its Designated Support Contact via email, phone or through the Support Portal.
- 7.5. Customer shall ensure that Customer's Designated Support Contact is trained on the use and administration of the Hosted Application(s).
- 7.6. Customer shall ensure that the name, contact and other information for the Designated Support Contact is current in the Support Portal.

- 7.7. Customer may replace the Designated Support Contact by updating the applicable information in the Support Portal, provided that at no time may Customer have more than one Contact permitted.
- 7.8. Fraxion shall not be responsible or liable for any delays resulting from inaccurate contact information for the Designated Support Contact or failure of the Designated Support Contact to promptly respond to communications from Fraxion.

8. Technical Support Exclusions

- 8.1. Fraxion is not required to provide resolutions for issues that are determined by Fraxion not to be Severity 1 or Severity 2 issues, immaterial defects or defects due to modifications of the Hosted Application(s) made by anyone other than Fraxion (or anyone acting at Fraxion's direction).
- 8.2. The following services are specifically excluded from Technical Support:
- Implementation services
 - Configuration services
 - Integration services
 - Customization services or other custom software development
 - Training
 - Assistance with administrative functions
- 8.3. Fraxion may at its sole and absolute discretion, provide Customer with the following support services, which services will be billable to the Customer on a time and materials basis:
- support for issues that are not deemed by Fraxion to be Severity 1 and 2;
 - additional support services that may be needed due to the changes made to other peripheral software and hardware affecting the Hosted Application(s) that was not affected by Fraxion. This includes upgrades or any changes to all software with which the Hosted Application(s) integrate;
 - data backup retrieval and restoration of any of the Customer's on premises applications (rectification of lost or corrupted data arising for any reason other than as a result of Fraxion's own negligence);
 - on site remedial maintenance during normal working hours, in respect of business-related problem calls or errors in the Customer setup;
 - organizational measures such as definition and configuration of parameters of specific business flows, which includes any organizational change affecting lines or approval limits;
 - inspection of and changes to the Hosted Application(s) configuration environment,
 - system tuning after system changes and extensions, where such changes or extensions have been implemented by third parties;

- support of any other licensed material other than the Hosted Application(s) licensed to you, accessories, attachments, machines, peripheral equipment, systems or other devices not supplied by Fraxion;
- support services of any changes, alterations, additions, modifications or variations not performed by Fraxion to the Hosted Application(s);
- attendance to faults caused by using the Hosted Application(s) outside design or other specifications or outside the provisions laid down in any documentation supplied with the Hosted Application(s) to you;
- diagnosis and/or rectification of problems not directly associated with the Hosted Application(s); and
- repairs or replacements necessitated by accidental damage, Data Processor errors, abnormal operating conditions, the connection of unauthorized peripheral equipment, improper use, misuse, neglect or abuse of the Hosted Application(s), assistance on hardware usage or service calls necessitated by causes external to the Hosted Application(s)

9. Update Process

- 9.1. Fraxion shall use commercially reasonable efforts to
 - monitor the Hosted Application(s) and related infrastructure for opportunities to address performance, availability and security issues; and
 - at Fraxion's discretion, deliver functionality enhancements to address customer and market requirements to improve such Hosted Application(s) based on Fraxion innovation.
- 9.2. Fraxion's update and release process, as updated from time to time, is described in Annexure C and Annexure D (the "Update Process").
- 9.3. Customer shall upon notice comply with the Update Process and understands that only the latest release of the Hosted Application(s) contain the most current features, availability, performance and security, including software fixes.
- 9.4. Fraxion is not responsible for product defects or security issues affecting the Hosted Application(s) or failure to meet the Uptime SLA (defined in Annexure B) for Hosted Application(s) when Customer is not in compliance with the Update Process.

ANNEXURE B – UPTIME SERVICE LEVEL AGREEMENT (SLA)

1. If service outages result in a failure of any production instance of a Hosted Application to meet an uptime availability requirement of 99.5% over a calendar month ("Uptime SLA"), Customer's sole and exclusive remedy shall be a service credit equal to the greater of:
 - (a) Ten percent (10%) of the Hosting and Support Fees set forth in the applicable Order Form for the applicable Hosted Application for that calendar month; or

(b) The actual unavailability rate for that calendar month (as an example, if the Hosted Application has an uptime availability of 85% during a calendar month, then the service credit shall be fifteen percent (15%) of the applicable subscription fees for that calendar month).

2. The following events shall be excluded in calculating Uptime SLA:
- (a) Planned maintenance windows, which are described in Annexure D; and
 - (b) Emergency maintenance (corrective maintenance as part of a system recovery following, for example, a security breach, the fixing of a critical bug/s or any other circumstance outside Fraxion's control) required to address an exigent situation with the Hosted Application that if not addressed on an emergency basis could result in Material harm to the Hosted Application. Fraxion shall provide advance notice of emergency maintenance via the Support Portal to the extent practicable.
 - (c) Any unavailability caused by circumstances beyond Fraxion's reasonable control, including without limitation, unavailability due to Customer or its Users' acts or omissions, a Force Majeure Event, Internet service provider failures or delays, failure or malfunction of equipment or systems not belonging to or controlled by Fraxion,

3. Items (a) – (c) collectively, **"Excused Downtime"**.

Fraxion reserves the right to perform planned maintenance outside the target periods above if circumstances require, and Fraxion shall provide prior notice to Customer via the Support Portal before doing so.

4. Uptime SLA is calculated as follows:

$\frac{(x - y - z)}{(x - z)} \times 100$	x = total number of minutes in a calendar month y = downtime that is not excluded z = Excused Downtime (as defined above)
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5. Customer must request all service credits in writing to Fraxion within thirty (30) days of the end of the month in which the Uptime SLA was not met, including identifying the period Customer's production instance of the Hosted Application(s) was not available. Fraxion shall apply the service credit during Customer's next billing cycle unless the service credit is reasonably disputed by Fraxion, in which case Customer and Fraxion shall work together in good faith to resolve such dispute in a timely manner. The total amount of service credits for any month may not exceed the applicable monthly subscription fee for the affected Hosted Application and has no cash value (unless a service credit is owed at the termination or expiration of this Agreement without a renewal order, in which case, such service credit shall be paid to Customer within ninety (90) days of the end of the Subscription Term).

ANNEXURE C

Fraxion Release Types

Overview

Fraxion has three types of releases for our service:

Type	Scope
Major release	New features and functionality
Maintenance update	Scheduled fixes for customer reported issues and critical security issues
Daily update	Unscheduled fixes for critical issues that impact a majority of customers

Release Numbering

Fraxion uses a X.Y.Z numbering scheme where:

- 9.5. X is the Major release number
- 9.6. Y is the Maintenance update number
- 9.7. Z is the Daily update number

For example 4.4.0 would represent Release 4 and maintenance update 4. Another example would be 15.1.1 which would represent Release 5, maintenance update 1, and daily update 1.

ANNEXURE D

Maintenance Windows

Major Releases and Maintenance Updates	Daily Update
Monday in one of the following time windows: 1:00am to 6:00am	Updates to instances can occur at any time if there's no expected downtime. Updates start after 1:00am if Fraxion expects some downtime.

Expected Downtime

Fraxion understands the importance of the Customer's business so Fraxion aims to minimize any disruptions to the Customer's service during deployment and to limit the disruption to:

- Less than 3 hours for major releases and system updates
- Less than 10 minutes for maintenance and daily updates

If Fraxion knows that more downtime is required, Fraxion will let the Customer know in its release communications.

Fraxion may update and/or modify this Annexure upon five (5) days written notice to Customer.