



## AXIUM SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS SOFTWARE LICENSE AND SERVICES AGREEMENT ("AGREEMENT") IS MADE BY AND BETWEEN XTS SOFTWARE CORPORATION, d/b/a AXIUM ("AXIUM"), AND THE INDIVIDUAL, OR THE COMPANY OR OTHER ORGANIZATION ON WHOSE BEHALF SUCH INDIVIDUAL ACCEPTS THIS AGREEMENT ("CLIENT") FORMED BY CLICKING THE "I ACCEPT" BUTTON PRIOR TO INSTALLING OR UPDATING THE SOFTWARE OR ON THE INVOICE FOR PRODUCT OR SERVICES. PLEASE READ ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT CAREFULLY BEFORE ACCEPTING THIS AGREEMENT. BY CLICKING ON THE "I ACCEPT" BUTTON CLIENT HEREBY AGREES TO, AND AGREES TO BE BOUND BY, THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, AND REPRESENTS TO AXIUM THAT IT IS AUTHORIZED TO DO SO. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT OR IF YOU DO NOT HAVE AUTHORITY TO BIND THE COMPANY OR OTHER ORGANIZATION ON WHOSE BEHALF YOU ARE ACCEPTING THIS AGREEMENT, CLICK THE "I DECLINE" BUTTON.

### SECTION 1. Definitions.

For the purposes of this Agreement, the following terms have the meanings set forth below:

1.1 "**Additional Services**" shall mean implementation or integration services; training services; programming or coding services; data conversion services; or on-site support services, other than the Support Services defined in Section 1.13, provided by Axium at the request of the Client.

1.2 "**Authorized Server**" shall mean one computer, setup and designated by Client as a network server and used for Client's internal business purposes.

1.3 "**Confidential Information**" means any material, data, or information in whatever form or media of a party to this Agreement that is provided or disclosed to the other, and shall include, the Services rendered by Axium to Client, the Software licensed by Axium to Client, financial and operational information, and other matter relating to the operation of Axium's or Client's business, including information relating to actual or potential customers, accounting, finance or tax information and pricing information.

1.4 "**Invoice**" shall mean any invoice issued by Axium for Software or Services.

1.5 "**Effective Date**" shall mean the date the Client accepts this Agreement.

1.6 "**Functional Specifications**" shall mean those functional specifications set forth in the Software Documentation to which the Software shall conform.

1.7 "**License Fees**" shall mean the fees paid to Axium for the right to use the Software.

1.8 "**Services**" shall mean collectively the Additional Services and Support Services provided by Axium.

1.9 "**Software**" shall mean the Ajera Software Suite, which includes AjeraCore and AjeraComplete and any and all updates, add-ons, and enhancements created by Axium.

1.10 "**Software Documentation**" shall mean the tutorial and technical publications and materials supplied with the Software which shall include system requirements for implementation and operation of the Software as well as the Functional Specifications of the Software.

1.11 "**Support Fees**" shall mean the fees paid to Axium for Support Services.

1.12 "**Support Period**" shall mean that period of time that Axium is obligated to provide Support Services. The initial Support Period shall commence on the date of the delivery of the Software as provided in Section 4.1 and shall expire at the end of the last day of the month in which occurs the date twelve (12) months after the date of the delivery of the Software as provided in Section 4.1. The Support Period may be renewed by the Client in accordance with Section 7.

**1.13 “Support Services”** shall mean the (a) Client access to and utilization of technical assistance via telephone; (b) Client access to and utilization of Axiom’s online Software support center; and (c) Client access to and utilization of upgrades in the Software.

**1.14 “Users”** shall mean those employees or agents of Client authorized to use the Software.

## **SECTION 2. Scope and Term of Agreement.**

This Agreement sets forth the terms and conditions under which Axiom shall license the Software and provide the Services to Client. This Agreement shall remain in effect unless and until terminated by Axiom or Client in accordance with Section 10.

## **SECTION 3. Software License.**

**3.1** Subject to the terms and provisions of this Agreement, as well as payment of the License Fees, Axiom hereby grants to Client a non-exclusive, non-transferable and non-assignable license to use the Software for Client’s internal business purposes. The license covers the Software and Software Documentation.

**3.2** Client may install the Software on the Authorized Server. The Software may be used by no more than the maximum number of Users set forth in the Invoice. If the Client desires to add additional Users, the Client shall secure the prior approval of Axiom, which may be granted subject to an additional fee. Client is authorized to copy the Software solely for backup, testing, archival, and disaster recovery purposes. Client shall not alter, modify, adapt, reverse engineer, decompile, disassemble, or create derivative works from the Software, nor take any other action intended to reproduce the source code of the Software or any part thereof without the prior written consent of Axiom. The Client shall not remove any copyright or proprietary rights notices from the Software and shall reproduce all such notices on any copies made in accordance with this Section 3.2.

**3.3** Client may transfer its right to use the Software provided (a) Client is in receipt of the prior written consent of Axiom, which may be withheld by Axiom in Axiom’s sole discretion; (b) Client has paid any additional fee which Axiom may charge Client in Axiom’s sole discretion; and (c) Client transfers the most recent production release of the Software, including any and all updates to the Software. Any transfer of Client’s right to use the Software made in violation of the terms and provisions of this Section 3.3 shall be null and void and of no binding force or effect.

**3.4** Client agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act, or any other export laws, restrictions, or regulations.

## **SECTION 4. Software Delivery and Installation.**

**4.1** Upon payment of the License Fee, Axiom shall make the Software available to Client for electronic download at Axiom’s online Software support center. Through Axiom’s online Software support center, the Client may access and electronically download the current production release of the Software and all supporting documents and materials.

**4.2** Client shall be solely responsible for installation of the Software on computers and operating systems that meet the requirements for operation of the Software as identified in the Software Documentation.

## **SECTION 5. Nondisclosure of Confidential Information.**

**5.1** Axiom and Client agree that the party receiving Confidential Information shall exercise the same degree of care and protection with respect to the Confidential Information of the party disclosing the Confidential information that it would exercise with respect to its own Confidential Information and shall not directly or indirectly disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the disclosing party, without the prior written consent of the disclosing party, except the receiving party may disclose Confidential Information on a need-to-know basis, to employees, agents or representatives of the receiving party

who are informed by the receiving party of the confidential nature of the Confidential Information and the obligations of the receiving party under this Agreement or in accordance with a judicial or other governmental order, but only if the receiving party promptly notifies the disclosing party of the order and complies with any applicable protective or similar order. The receiving party will cause its employees, agents and representatives to comply with the provisions of this Section 5.1.

**5.2** Axiom and Client agree that the party receiving Confidential Information will promptly notify the disclosing party of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement; and assist the disclosing party in every reasonable way to retrieve any Confidential Information that was used or disclosed by the receiving party or an employee, agent and representative of the receiving party without the disclosing party's specific prior written authorization and to mitigate the harm caused by the unauthorized use or disclosure.

**5.3** Axiom and Client agree that the party receiving Confidential Information will not breach Section 5.1 or Section 5.2 by using or disclosing Confidential Information if the receiving party demonstrates that the information used or disclosed (a) is generally available to the public other than as a result of a disclosure by the receiving party or an employee, agent and representative of the receiving party; (b) was received by the receiving party from a third party without any limitations on use or disclosure; or (c) was independently developed by the receiving party without use of the Confidential Information.

**5.4** Axiom and Client agree that upon the request of the party disclosing Confidential Information, the receiving party will (a) promptly return to the disclosing party all materials furnished by the disclosing party containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of the receiving party, and provide written certification that all such Confidential Information has been returned to the disclosing party, or (b) promptly destroy all materials furnished by the disclosing party containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of the receiving party, and provide written certification that all such Confidential Information has been destroyed by the receiving party.

**5.5** Axiom and Client acknowledge and agree that the remedies available at law for any breach of this Agreement will, by their nature, be inadequate. Accordingly, each party may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

## **SECTION 6. Software Ownership Rights; Intellectual Property Rights and Intellectual Property Rights Indemnification by Axiom.**

**6.1** Client acknowledges and agrees that the Software and Software Documentation, and all intellectual property rights therein, are (a) the sole and exclusive property of Axiom; (b) protected by United States Copyright Law; and (c) the Software is a trade secret of Axiom. Except to the limited extent required for Client to use the Software pursuant to the license granted in Section 3.1, nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license in any existing or future intellectual property of Axiom. No title or ownership rights to the Software are transferred to Client by this Agreement, but shall remain with Axiom. All rights not expressly granted by Axiom with respect to the Software under this Agreement are reserved by Axiom.

**6.2** Axiom shall defend at its own expense any action against Client brought by a third party to the extent that the action is based upon a claim that the Software directly infringes any copyright filed in the United States or misappropriates any trade secret recognized as such under the Oregon Trade Secrets Act, and Axiom will pay those costs and damages finally awarded against Client in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Axiom obligations under this Section 6.2 are conditioned on (a) Client notifying Axiom within ten (10) days of notice of such action, (b) Client giving Axiom sole control of the defense thereof and any related settlement negotiations, and (c) Client cooperating with Axiom in such defense (including, without limitation, by making available to Axiom all documents and materials in Client's possession or control that are relevant to the infringement or misappropriation claims, and by making Client's personnel available to testify or consult with Axiom or its

attorneys in connection with said defense). If the Software becomes, or in Axiom's opinion is likely to become, the subject of an infringement or misappropriation claim, Axiom may, at its option and expense, either (i) procure for client the right to continue using the Software; (ii) replace or modify the Software so that it becomes non-infringing, or (iii) terminate Client's right to use the Software and give Client a refund or credit of the amounts actually paid by Client to Axiom for the Software less a reasonable allowance for the period of time Client has used the Software. Axiom will have no obligation with respect to any infringement or misappropriation claim based upon (1) any use of the Software not in accordance with the Agreement or for purposes not intended by Axiom; (2) any use of the Software in combination with other products, equipment, software, or data not supplied by Axiom; (3) any use of any release of the Software other than the most current release made available to Client; or (4) any modification of the Software made by any person other than Axiom. This Section 6.2 states Axiom's entire liability and Client's sole and exclusive remedy for infringement and misappropriation claims and actions.

## **SECTION 7. Software Support Services and Additional Services.**

**7.1** During the Support Period Axiom will provide Client with Support Services. Axiom's continuing obligation to provide Support Services is contingent on payment in full of the Support Fees by Client to Axiom. Within the sixty (60) day period prior to the expiration of the Support Period, Axiom shall send Client an Invoice for Support Fees for the next Support Period. Client's payment of the Support Fee in response to an Invoice for Support Services prior to (a) the expiration date of the then current Support Period, or (b) thirty (30) days after the date of expiration for Support Services, whichever is later, will extend the Support Period for (i) twelve (12) months from the date of expiration of the then current Support Period; or (ii) if the Invoice for Support Service specifies that the Invoice is for a prorated Support Fee to cover an interim period (i.e. to adjust subsequent expiration dates of the Support Period), until the new expiration date indicated in Axiom's invoice for Support Services. Client's failure to pay the Support Fees in response to Invoice for Support Services shall constitute Client's election to allow the Support Period to expire without further notice from Axiom. If the Support Period is allowed to expire, Axiom may condition any subsequent reinstatement of the Support Period on (1) payment by Client of an additional fee set by Axiom in Axiom sole discretion, and (2) Client's installation of any updates to the Software released by Axiom subsequent to the expiration of the Client's last Support Period. Such reinstatement will be effective as of its date and will not be retroactive.

**7.2** The Support Services provided by Axiom during the Support Period specifically and expressly do NOT include the Additional Services defined in Section 1.1. Should Client require Additional Services, those Additional Services may be available subject to payment of Axiom's fees and as otherwise agreed to in writing by Axiom and Client.

**7.3** Any prepaid fees for Additional Services paid to Axiom by Client pursuant to an Invoice that are unused, may be applied by Axiom against any Support Fees to be paid by Client for Support Services pursuant to Section 7.1.

## **SECTION 8. Limited Warranty and Warranty Disclaimer.**

**8.1** Axiom warrants that (a) the Software shall substantially conform to the Functional Specifications and (b) that the Software Documentation shall be substantially free of errors. This warranty shall extend for ninety (90) days from delivery of the Software as set forth in Section 4.1. In the event of any breach of the warranty set forth in this Section 8.1, Axiom's sole and exclusive responsibility, and the Client's sole and exclusive remedy, shall be for Axiom to correct or replace, at no additional charge to Client, any portion of the Software found to be defective; provided, however, that if within a commercially reasonable period Axiom neither corrects nor replaces the defective Software, then Client's sole and exclusive remedy shall be to receive direct damages not to exceed the License Fees paid to Axiom. Axiom does not warrant that the operation of the Software will be uninterrupted or error free or that the Software will meet the Client's operational requirements. Axiom is not responsible for errors or defects in the Software caused by changes in or to the operating characteristics of the Client's computer hardware or operating systems made after delivery of the Software as set forth in Section 4.1 or errors or defects in the Software caused by the interaction of the Software with third party programs or applications. The warranty set forth in this Section 8.1 shall be void as to Software where noncompliance is caused or related to (a) the acts or omissions of non-Axiom personnel, agents, or third parties; (b) any alternations or modifications made to the Software by Client, its personnel or agents; (c) use of the Software other than in the operating environment

specified in the Software Documentation; or (d) coding, information, or specifications created or provided by the Client.

**8.2** Axium warrants that any Services provided by Axium pursuant to this Agreement shall be performed in accordance with the prevailing professional standards of the software industry. In the event of any breach of the warranty set forth in this Section 8.2, Axium's sole and exclusive responsibility, and the Client's sole and exclusive remedy, shall be for Axium to correct, at no additional charge to Client, any portion of the Services found not to meet prevailing professional standards of the software industry; provided, however, that if within a commercially reasonable period Axium fails to correct the Services found not to meet prevailing professional standards of the software industry, then Client's sole and exclusive remedy shall be to receive direct damages not to exceed the fees paid to Axium for the Services.

**8.3** In the event of any breach of any provisions of this Agreement other than the warranties set forth in this Agreement, Client's sole and exclusive remedy shall be to receive direct damages not to exceed the License Fee.

**8.4** EXCEPT AS SET FORTH IN THIS SECTION 8, AXIUM MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESEPECT TO THE SOFTWARE OR SERVICES, OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICUALR PURPOSE OR USE BY CLIENT. AXIUM FURNISHES THE ABOVE WARRANTIES IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICUALR PURPOSE.

#### **SECTION 9. Limitation of Liability.**

**9.1** AXIUM SHALL NOT BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR THE OPERATION OR USE OF THE SOFTWARE OR SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CUSTOMER BY ANY THIRD PARTY, EVEN IF AXIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (b) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY AXIUM TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND AXIUM'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST AXIUM MORE THAN ONE (1) YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

**9.2** NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, BUT EXCLUDING ANY CLAIMS FOR INDEMNIFICATION UNDER SECTION 6, AXIUM'S LIABILITY UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY AXIUM UNDER THIS AGREEMENT.

#### **SECTION 10. Termination.**

**10.1** Axium shall have the right to terminate this Agreement if (a) Client fails to pay any Invoice, other than for Support Fees, within ten (10) days after receiving written notice of such obligation from Axium; (b) Client breaches any provision of this Agreement and fails to remedy such breach within thirty (30) days after receiving written notice of such breach; or (c) a proceeding is instituted by or against Client seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking an entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or any substantial part of its property or taking any action to authorize any of the foregoing or similar actions by or against Client.

**10.2** Client shall have the right to terminate this Agreement if (a) Axium breaches any provision of this Agreement and fails to remedy such breach within thirty (30) days after receiving written notice of such breach; or

(b) a proceeding is instituted by or against Axium seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking an entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or any substantial part of its property or taking any action to authorize any of the foregoing or similar actions by or against Axium.

**10.3** Upon any termination of this Agreement, Client shall make no further use of the Software and shall either return to Axium or destroy originals and all copies of the Software and Software Documentation. Client shall supply a written affidavit executed by an officer of Client to Axium certifying that it no longer possesses any embodiments of the Software or Software Documentation. No refunds or credits will be due Client.

**SECTION 11. Governing Law; Venue.**

Axium and Client agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to conflict of laws principles. Any action or proceeding seeking to enforce any provisions of, or based on any right or claim arising out of this Agreement will be brought against Axium or Client in Washington County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements in the United States District Court of the District of Oregon, Portland Division, and Axium and Client consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

CLIENT ACKNOWLEDGES THAT CLIENT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. CLIENT FURTHER AGREES THAT THE AGREEMENT IS A COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN AXIUM AND CLIENT AND THAT IT SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS, NEGOTIATIONS, DISCUSSIONS, AND PROPOSALS, OR AL OR WRITTEN, AND ANY AND ALL OTHER COMMUNICATIONS RELATING TO THE SUBJECT MATTERS OF THE AGREEMENT.