



## Aforza Online Subscription Agreement

THIS AFORZA SUBSCRIPTION AGREEMENT (THE "AGREEMENT") IS BY AND BETWEEN AFORZA LIMITED, WITH BUSINESS OFFICES LOCATED AT 3<sup>RD</sup> FLOOR, 1 ASHLEY ROAD, ALTRINCHAM, CHESHIRE, WA14 2DT, UNITED KINGDOM ("AFORZA"), AND YOU (THE "CUSTOMER"). THIS AGREEMENT SHALL BE EFFECTIVE AS OF THE DATE OF ELECTRONIC ACCEPTANCE BY CLICKING A BOX INDICATING ACCEPTANCE OR BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT ("EFFECTIVE DATE").

THIS AGREEMENT GOVERNS ANY FREE TRIAL PERIODS FOR AFORZA SERVICES AND ANY USAGE THEREAFTER BY CUSTOMER AND USERS, WHETHER PAID OR NOT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DURING ANY TRIAL PERIOD, THE SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTY.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The parties agree as follows:

### 1. DEFINITIONS

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control" for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Agreement"** means this Master Subscription Agreement and any exhibits, schedules and addenda hereto.

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

**"Content"** means information obtained by Aforza from publicly available sources or its third-party content providers and made available to Customer through the Services, Beta Services or pursuant to an Order Form, as more fully described in the Documentation.

**"Customer"** means the customer named above together with its Affiliates which have entered into Order Forms.

**"Customer Data"** means electronic data and information submitted by or for Customer to the Services.

**"Documentation"** means the Product Terms Directory available at <https://info.aforza.com/legal-agreements> and applicable Service's documentation, and its usage guides and policies, as updated from time to time accessible via login to the applicable Service or <https://success.aforza.com>.

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



**"Marketplace"** means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, the AppExchange at <http://www.salesforce.com/appexchange> and any successor websites.

**"Non-SFDC Application"** means a Web-based, mobile, offline or other software application functionality that interoperates with a SFDC Service, that is provided by Aforza, Customer, or a third party and/or listed on a Marketplace including as Salesforce Labs or under similar designation. Non-SFDC Applications, other than those obtained or provided by Customer, will be identifiable as such.

**"Non-Aforza Applications"** means Web-based, mobile, offline, or other software functionality that interoperates with a Service, that is provided by Customer or a third party and/or listed on a Marketplace including as Aforza Labs or under similar designation. Non-Aforza Applications, other than those obtained or provided by Customer, will be identifiable as such.

**"Order Form"** means an ordering document or online order specifying the Services to be provided hereunder that is entered between Customer and Aforza or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**"Services"** means the products and services that are ordered by Customer under an Order Form and made available online by Aforza, including associated Aforza offline or mobile components, as described in the Documentation. "Services" exclude Content and Non-Aforza Applications.

**"SFDC"** means salesforce.com.

**"SFDC Platform"** means Customer's unique instance of the online platform provided by SFDC on which the Services are installed as a managed package.

**"SFDC Services"** means the products and services that are ordered directly or indirectly by Customer under an Order Form and made available online by SFDC including associated offline or mobile components, as described in the Documentation. "SFDC Services" exclude Content and Non-SFDC Applications.

**"User"** means an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by Aforza without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, Aforza at Customer's request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

## **2. AFORZA RESPONSIBILITIES**

**2.1 Provision of Services.** Aforza will (a) make the Services and Content available to Customer pursuant to this Agreement and the applicable Order Forms and Documentation, (b) provide applicable Aforza standard support for the Services to Customer at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Aforza shall give advance electronic notice as provided in the Documentation), and (ii) any unavailability caused by circumstances beyond Aforza's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving Aforza employees), Internet hosting or other third-party service provider failure or delay, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to Aforza's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services), and



subject to Customer's and Users' use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form.

- 2.2 Protection of Customer Data.** Aforza will use commercially reasonable industry standard security technologies in providing the Services. Aforza has implemented and will maintain appropriate technical and organizational measures, including information security policies and safeguards, to preserve the security, integrity, and confidentiality of Customer Data and to protect against unauthorized or unlawful disclosure or corruption of or access to Customer Data. The terms of the data processing addendum at <https://info.aforza.com/hubfs/Legal/Aforza%20Data-Processing-Addendum.pdf> posted as of the Effective Date are hereby incorporated by reference. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data exporter, and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order Form, shall be treated as its execution of the Standard Contractual Clauses and Appendices
- 2.3 Use of Aggregate Data.** Customer agrees that Aforza may collect, use, and disclose quantitative data derived from the use of the Services for its customer support and general business purposes, including industry analysis, benchmarking, analytics, and marketing. All data collected, used, and disclosed will be in aggregate and deidentified form only and will not identify Customer, its Authorized Users, Customer Data, or any third parties utilizing the Services.
- 2.4 Aforza Personnel.** Aforza will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Aforza's obligations under this Agreement, except as otherwise specified in this Agreement.
- 2.5 Beta Services.** From time to time, Aforza may make Beta Services available to Customer at no charge. Customer may choose to try such Beta Services or not, at its sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, however, all restrictions, Aforza reservation of rights and Customer obligations concerning the Services, and use of Content, shall apply equally to Customer's use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. Aforza may discontinue Beta Services at any time in its sole discretion and may never make them generally available. Aforza will have no liability for any harm or damage arising out of or in connection with a Beta Service.

### **3. USE OF SERVICES AND CONTENT**

- 3.1 Subscriptions.** Unless otherwise provided in the applicable Order Form or Documentation, (a) Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Aforza regarding future functionality or features.
- 3.2 Usage Limits.** Services and Content are subject to usage limits specified in Order Forms and Documentation. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) except as set forth in an Order Form, a User identification may only be reassigned to a new individual replacing one who will no longer use the Service or Content. If Customer exceeds a contractual usage limit, Aforza may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding Aforza's efforts, Customer is



unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Aforza's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

**3.3 Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data and complying with applicable data privacy and protection regulations, laws or conventions, (c) be responsible for the interoperation of any Non-Aforza Applications with which Customer uses the Services or Content, (d) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Aforza promptly of any such unauthorized access or use, and (e) use Services and Content only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (f) comply with terms of service of any Non-Aforza Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in Aforza's judgment threatens the security, integrity or availability of Aforza's services, may result in Aforza's immediate suspension of the Services, however Aforza will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

**3.4 Usage Restrictions.** Customer will not (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-Aforza Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access, copy or use any of Aforza intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy or create derivative works of a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

**3.5 Removal of Content.** If Customer receives notice, including from Aforza, that Content must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or if applicable, the SFDC Acceptable Use and External Facing Services Policy ([https://www.salesforce.com/content/dam/web/en\\_us/www/documents/legal/Agreements/policies/ExternalFacing\\_Services\\_Policy.pdf](https://www.salesforce.com/content/dam/web/en_us/www/documents/legal/Agreements/policies/ExternalFacing_Services_Policy.pdf)), Customer will promptly do so. If Customer does not take required action, including deleting any Content Customer may have downloaded from the Services, in accordance with the above, or if in Aforza's judgement continued violation is likely to reoccur, Aforza may disable the applicable Content, Service and/or Non-SFDC Application. If requested by Aforza, Customer shall confirm deletion and discontinuance of use of such Content in writing and Aforza shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if Aforza is required by any third-party rights holder to remove Content, or receives information



that Content provided to Customer may violate applicable law or third-party rights, Aforza may discontinue Customer's access to such Content through the Services.

#### **4. NON-AFORZA PRODUCTS AND SERVICES**

- 4.1 Non-Aforza Products and Services.** Aforza or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-Aforza Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-Aforza provider, product or service is solely between Customer and the applicable Non-Aforza provider. Aforza does not warrant or support Non-Aforza Applications or other Non-Aforza products or services, whether or not they are designated by Aforza as "certified" or otherwise, unless expressly provided otherwise in an Order Form. Aforza is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-Aforza Application or its provider.
- 4.2 Non-Aforza Applications and Customer Data.** If Customer installs or enable a Non-Aforza Application for use with a Service, Customer grants Aforza permission to allow the provider of that Non-Aforza Application to access Customer Data as required for the interoperation of that Non-Aforza Application with the Service. Aforza is not responsible for any processing, disclosure, modification or deletion of Customer Data resulting from access by a Non-Aforza Application. The Services will allow Customer to restrict Users from installing or enabling Non-Aforza Applications (other than the Salesforce platform) for use with the Services.
- 4.3 Integration with Non-Aforza Products and Services.** The Services may contain features designed to interoperate with Non-Aforza Applications. Aforza cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Aforza Application ceases to make the Non-Aforza Application available for interoperation with the corresponding Service features in a manner acceptable to Aforza.

#### **5. FEES AND PAYMENT**

- 5.1 Fees.** Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- 5.2 Invoicing and Payment.** Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Aforza and notifying Aforza of any changes to such information.
- 5.3 Overdue Charges.** If any invoiced amount is not received by Aforza by the due date, then without limiting Aforza's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower and/or (b) Aforza may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above.
- 5.4 Suspension of Service.** If any charge owing by Customer is 30 days or more overdue, Aforza may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit and whose payment has been declined, Aforza has given Customer at least 10 days' prior notice that its account is overdue in accordance with the "Notices" section below.





**5.5 Payment Disputes.** Aforza will not exercise its rights under the “Overdue Charges” or “Suspension of Service” section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

**5.6 Taxes.** Aforza’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Aforza has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Aforza will invoice Customer and Customer will pay that amount unless Customer provides Aforza with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Aforza is solely responsible for taxes assessable against it based on its income, property and employees.

## **6. PROPRIETARY RIGHTS AND LICENSES**

**6.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Aforza, its Affiliates, its licensors and Content providers reserve all their right, title and interest in and to the Services and Content, including all their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**6.2 Access to and Use of Content.** Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.

**6.3 License by Customer to Aforza.** Customer grants Aforza, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, process, and display any Non-Aforza Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for Aforza to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-Aforza application with a Service, Customer grants Aforza permission to allow the Non-Aforza Application and its provider to access Customer Data and information about Customer’s usage of the Non-Aforza Application as appropriate for the interoperation of that Non-Aforza Application with the Service. Subject to the limited licenses granted herein, Aforza acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-Aforza Application or such program code. Customer Data is and will remain owned by Customer.

**6.4 License by Customer to Use Feedback.** Customer grants to Aforza and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Aforza’s or its Affiliates’ services.

## **7. CONFIDENTIALITY**

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



third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Aforza services.

**7.2 Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, Aforza may disclose the terms of this Agreement and any applicable Order Form to a contractor or Non-Aforza Application provider to the extent necessary to perform Aforza’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

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

## **8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

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

**8.2 Aforza Warranties.** Aforza warrants that during an applicable subscription term (a) the Services will perform materially in accordance with the applicable Documentation, (b) it will not materially decrease the overall functionality of the Services and (c) subject to the “Integration with Non-Aforza Applications” section above, Aforza will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

**8.3 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **9. MUTUAL INDEMNIFICATION**



**9.1 Indemnification by Aforza.** Aforza will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Aforza in writing of, a Claim Against Customer, provided Customer (a) promptly gives Aforza written notice of the Claim Against Customer, (b) gives Aforza sole control of the defence and settlement of the Claim Against Customer (except that Aforza may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Aforza all reasonable assistance, at Aforza's expense. If Aforza receives information about an infringement or misappropriation claim related to a Service, Aforza may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Aforza's warranties under "Aforza Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defence and indemnification obligations do not apply if (I) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (II) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Aforza, if the Services or use thereof would not infringe without such combination; (III) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (IV) a Claim Against Customer arises from Content, a Non-Aforza Application or Customer's breach of this Agreement, the Documentation or applicable Order Forms.

**9.2 Indemnification by Customer.** Customer will defend Aforza and its Affiliates against any claim, demand, suit or proceeding made or brought against Aforza by a third party (a) alleging that the combination of a Non-Aforza Application or configuration provided by Customer and used with the Services, infringes or misappropriates such third party's intellectual property rights, or (b) arising from (i) Customer's use of the Services or Content in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form, (ii) any Customer Data or Customer's use of Customer Data with the Services, or (iii) a Non-Aforza Application provided by Customer (each a "Claim Against Aforza"), and will indemnify Aforza from any damages, attorney fees and costs finally awarded against Aforza as a result of, or for any amounts paid by Aforza under a settlement approved by Customer in writing of, a Claim Against Aforza, provided Aforza (a) promptly gives Customer written notice of the Claim Against Aforza, (b) gives Customer sole control of the defence and settlement of the Claim Against Aforza (except that Customer may not settle any Claim Against Aforza unless it unconditionally releases Aforza of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defence and indemnification obligations do not apply if a Claim Against Aforza arises from Aforza's breach of this Agreement, the Documentation or applicable Order Forms.

**9.3 Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

## **10. LIMITATION OF LIABILITY**

**10.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND





REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

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

## **11. TERM AND TERMINATION**

**11.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated.

**11.2 Term of Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional one-year terms, unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. The per-unit pricing during any renewal term will increase by up to 7% above the applicable pricing in the prior term, unless Aforza provides Customer notice of different pricing at least 60 days prior to the applicable renewal term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Aforza's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

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

**11.4 Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with the "Termination" section above, Aforza will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Aforza in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve Customer of its obligation to pay any fees payable to Aforza for the period prior to the effective date of termination.

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

## **12. GENERAL PROVISIONS**

**12.1 Export Compliance.** The Services, Content, other Aforza technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Aforza and Customer each represents that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently the



Crimea, Luhansk or Donetsk regions, Cuba, Iran, North Korea, or Syria) or in violation of any U.S. export law or regulation.

- 12.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 12.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Aforza and Customer regarding Customer's use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) any exhibit, schedule or addendum to this Agreement, (3) the body of this Agreement, and (4) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- 12.4 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment related taxes.
- 12.5 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 12.6 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 12.7 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 12.8 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favour of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Aforza will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 12.9 Publicity** Neither Party shall refer to the identity of the other party in promotional material, publications, or press releases or other forms of publicity unless the prior written consent of the other Party has been obtained, provided, however that Aforza may use Customer's name and logo for the limited purpose of identifying Customer as a customer of Aforza.
- 12.10 Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of England, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.



**12.11 Venue.** The courts located in London, England will have exclusive jurisdiction over any dispute relating to this Agreement, and each party consents to the exclusive jurisdiction of those courts.

**12.12 Counterparts.** This Agreement may be executed electronically, by facsimile and in counterparts.

**12.13 Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Notices to Aforza will be addressed to the attention of the Chief Commercial Officer at 3rd Floor, 1 Ashley Road, Altrincham, Cheshire, WA14 2DT, United Kingdom, or via email to [legal@aforza.com](mailto:legal@aforza.com). Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

**Last Updated: May 26, 2023**