AXIT Software as a Service
Terms and Conditions

(English Version)
November 2016

AXIT and its Affiliated Companies have developed and operate cloud based IT solutions to manage comprehensive logistics processes. AXIT standardizes and facilitates global communication between all supply chain participants and optimizes logistic processes for industrial and commercial partners incl. their logistic partners. For this purpose AXIT provides its logistic platform AX4 via central internet servers and grants to the customers access to AXIT's technical infrastructure. The user desktop is displayed through the customer's browser, on which the application is used. A download of the application is not offered. By using the AX4 Open application the customer may independently and flexibly design and administer its own master data and SCM workflows. In particular logistics service providers may define and configure proper solutions in AX4 for their own customers and partners. The services are further detailed in the Parties individual agreement and related subsequent written changes comprising the functional description AX4 platform, prices, contact persons and service level agreement, as far as individually agreed (hereinafter "PARTIES INDIVIDUAL AGREEMENT").

Article 1 - Definitions

1.1   "Administrator" shall mean any natural person designated by Company to administrate the AX4 Application (also named as "AX4 Open User").

1.2   "Affiliated Companies" are companies in which a Party directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Party. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise/ownership of more than fifty percent (50%) of the voting securities of a person.

1.3   "Agreement" shall mean the Parties Individual Agreement including the AXIT Software as a Service Terms and Conditions defined hereunder. In case of any contradictions the Parties Individual Agreement including its subsequent changes shall prevail over the AXIT Software as a Service Terms and Conditions hereunder.

1.4   "Application" means the AXIT logistics platform application which is a cloud based remote servicing system in an operational use after finalization of possible demonstration and/or test phases as described in the Parties Individual Agreement.

1.5   "Assets" means Company's units, devices and/or machines connected to the Application which provide data to the Application.

1.6   "Company" shall mean the company which has entered into a Parties Individual Agreement applying these AXIT Software as a Service Terms and Conditions.

1.7   "Content" describes all data, information, and content, which are stored in the storage space under the Terms and Conditions by Company, the User(s) or the Assets.

1.8   "Effective Date" shall be the date on which the Parties Individual Agreement becomes duly signed by both Parties which, for AXIT, requiring the signatures of two duly authorized representatives.

1.9   "Malware" means any functionality such as but not limited to viruses, so-called trojan horses, and hoax-viruses that may alter, damage, delete or otherwise interfere with Content, Application, Assets and/or data processing and storage infrastructure.

1.10   "Proprietary Rights" shall mean any third-party rights, such as but not limited to intellectual property rights including copyrights, patents, trademarks and trade secrets.

1.11   "Remote Connectivity" shall mean all ways and means to establish and maintain two way data communication between Assets and the System.

1.12   "System" shall mean a server in a virtual data center (e.g. in a cloud environment').

1.13   "Update" means a new program status developed to correct or circumvent errors of the Application which contains improvements in performance or function.

1.14   "User" means the individual person(s) who are authorized by the Company to have the right to use the Application (also named as "Named Login User"), e.g.:

- Business User: use of the Application for operational, IT-based logistics processes

- Master User: a Business User, who is entitled to create new Business Users

- AX4 Open User: use of the Application to administer and/or configure additional software parts for existing applications in various levels of details, entitled to create new Business Users

- Anonym User: use of the Application though anonym links for pre-defined overviews.

More details regarding rights and obligations of the Users are defined in § 2.3.

Article 2 - Right to use the Application

2.1   AXIT grants to Company the right to use the Application including storage for the data Content, to the extent specified in Parties Individual Agreement. With the Agreement no contractual relationships, rights or obligations of whatever legal nature are hereby assumed between AXIT and potential Company logistics suppliers.

2.2   AXIT grants to Company, during the Term (and any extension thereof as described in Article 17.1), the non-exclusive, non-transferable right to access and make use or have made use of the Application by its employees or third parties (including in particular Affiliated Companies, service partners and installers) via remote data connections to the System, particularly the Internet for Company's business requirements in relation to render services on the Assets. In case of AXIT's use of third party soft-

ware licences, Company licence rights are subject to the rights granted by such third party.

2.3   . Company is responsible for the installation and administration of access profiles and passwords. Company ensures that only permitted Master User or AX Open Users have access to the Application in the order and limits licensed by AXIT, incl. Users, who are not to be named towards AXIT and are created by Master Users, AX4 Open Users or AXIT. Company represents and warrants that any User, using the Application under a Company account or using Company's log-in credentials duly acts on behalf of Company and accepts AXIT Terms of Use which will be made accessible to the User during his first login.

Company shall inform AXIT about new Master Users and/or AX4 Open User. AXIT may check Users by system surveys. All rights, title and interest in and to Remote Connectivity, System and Application (and any part thereof), other than those expressly granted herein, shall remain wholly vested in AXIT or its third party suppliers and/or licensors. Company acknowledges that it has no rights whatsoever in respect of Application save for those expressly granted to it by Parties Individual Agreement. Company shall be responsible for the acts and omissions of any User as if they were Company's own acts and omissions. Company shall indemnify AXIT for any damage suffered by AXIT due to User's or Company`s non-compliance.

2.4   The Customer's AX4 Open User permitted by AXIT are entitled to configure the AX4 logistics platform for purposes of system adaptation and supplementation. The Customer and the Users are neither entitled to readout source and object codes, to de-/ compile nor to other interferences into the AX4 basic software. The Customer is obliged to comply with third party rights, indemnifies and holds AXIT harmless against possible third party claims. The Customer grants to AXIT free of charge a non-exclusive, transferable and irrevocable user right regarding its configurations and adaptations.

2.5   AXIT may alter, amend or modify the Application and its logistic platform at any time during the term of Parties Individual Agreement. Company and its Users may register with AXIT's Online-Service at https://trust.ax4.com to receive updates and notices about defects and their remedy status including planned release changes (excluding EDI-Clearing services).

2.6   Except as expressly provided otherwise in Parties Individual Agreement, AXIT has and will retain sole control over the operation, provision, maintenance and management of the Application.

Article 3 - Account Information and Content

3.1   In connection with the use of Application Content that will be collected and stored. Company hereby grants AXIT a non-exclusive, worldwide, royalty-free, perpetual, non-revocable right in all Content to compile, use, distribute, display, store, process, reproduce, and create derivative works from such Content, including without limitation comparative data sets, statistical analyses, reports and related services utilizing aggregated data derived from Content to the extent necessary to run the Application and in the development of Assets and services.

AXIT is responsible until the point of the router exit of AXIT's computer centers. After such point Company is responsible for any hardware and software including necessary telecommunications / internet connections in the quality and quantity to run AXIT's Application.

3.2   Company represents and warrants to have obtained (particularly from the relevant End-Users if necessary) all rights, permissions and consents necessary to upload, access online, per e-mail or EDI Content and permit AXIT to exercise all of its rights under the Agreement. Company shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness, of all Content.

3.3   In the event Parties Individual Agreement is terminated AXIT shall make available within thirty (30) days after termination or expiration of the Agreement and at Company's sole expense to Company a file containing the Content in a common, machine-readable format (e.g. csv, xml). AXIT reserves the right to withhold, remove and/or discard Content without notice for any breach, including, without limitation, non-payment. Upon termination for cause, Company's right to access or use Content immediately ceases, and AXIT shall have no obligation to maintain or forward any of the Content to Company.

3.4   AXIT is obliged to provide the AX4 Application at an availability rate of 98%. Availability means the technical usability of AX4 and the AX4 Application data at the hand-over point for the Company's usage. Possibly agreed Service Level Agreements (SLA) comprise more details.

3.5   AXIT archives all AX4 Application data for a period of 6 months.

3.6   During planned times of non-availability, AXIT may carry out maintenance, data archiving or other works. Possibly agreed Service Level Agreements (SLA) comprise more details.

Article 4 - Application Operation

4.1   The Parties agree that to enjoy access and use of Application, User must have an appropriate internet connection for the devices necessary for Application (including but not limited to supporting HTTP based access to servers in the internet and Secure Socket Layer based protocols) and an appropriate computer configuration, supported browsers (browser list to be accessed through http://www.axit.de/en/supported-browsers), the costs of which shall be borne by Company or Users. In order to have connectivity to Assets, Company must also establish an appropriate internet connection at its sole cost and expense. AXIT shall have no liability or responsibility for Company's or its Users' inability to access or use the Application resulting from the Company's failure to establish an appropriate internet connection or from any failure caused by any internet connection established by Company.

4.2   After the Effective Date AXIT grants Company and its Users to access and use Application in combination with its Assets [via internet facilities]. AXIT will open a new account for Administrator personalized for Company on System after Company's order with costs. If AXIT cannot provide access to and use of Application within a reasonable time after Effective Date due to reasons not attributable to AX-

IT, the Effective Date shall be deferred appropriately. AXIT shall only be in default if its contractual performance is due and if it has received an express written notice from Company as set forth in Section 17.2(ii) of the Agreement. Company shall inform AXIT immediately about changes in its telecommunications and data formats. Necessary AXIT adaptations and implementation shall be exercised according to an additional order.

4.3   While using the Application Company and User must not:

(i) act in a manner contrary to public decency;
(ii) spread content which is defamatory, libellous or commercially detrimental, illegal, harmful to minors, politically radical or offensive or in principal harm the rights or interests of other persons or companies;
(iii) violate intellectual property rights or other proprietary rights;
(iv) transmit any content containing viruses, Trojan horses or other programs that may damage software or upload any kind of malware;
(v) use the web application in a way that could damage, disable, overburden, impair or compromise Axit systems or security or interfere with other users;
(vi) enter, store or send hyperlinks or contents for which the user has no authorization, in particular when these hyperlinks or contents breach confidentiality or licence obligations or are otherwise illegal; or
(vii) distribute advertising or unsolicited e-mails ("spam") or unfounded warnings of viruses, defects or similar material.

Article 5 - Implementation Phase / Start of operation of the Application

5.1   Subject to and conditioned on Company's payment of the Fees and compliance and performance in accordance with the Agreement, AXIT shall provide the regular operation of the Application at the date as set forth in Parties Individual Agreement. Company shall provide all necessary access, data (such as but not limited to format description, example data, check lists, definition of desired communication means) and any other support as requested.

After AXIT's notifying Company of the Application's readiness for acceptance and appropriate test phase as defined in more detail in Parties Individual Agreement, Company shall accept the Application if no major issues are observed during such test phase. Unless Company notifies AXIT in writing within 10 business days after AXIT's acceptance readiness declaration specifying material deviations of the Application from the specifications set forth in Parties Individual Agreement, Company shall be deemed to have accepted the Application. In case of Company's operational use of the Application, acceptance shall be deemed to have occurred upon the first day of such operational use.   Partial acceptance shall be declared or deemed to have occurred on the same terms above in case of separable work portions or separate milestones as defined in the Parties Individual Agreement.

5.2   Company agrees and acknowledges that AXIT has no obligation to offer Company access to Application, if Company has materially breached the Agreement, including but not limited to failure to pay any payments due to AXIT under the Agreement.

Article 6 - Content Hosting

6.1   Content will be furnished by Company, Administrator, User and/or Assets under the responsibility of Company. AXIT shall store and process Content to make it operative in combination with Application and available for Company and/or its User.

6.2   Company, User and/or End-Users of Assets shall retain all title, copyright and other proprietary rights in and to any Content which is entered into Application. AXIT SHALL HAVE NO LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF THE CONTENT.

6.3   If volume limits for Content and/or number of Users as defined in Parties Individual Agreement are exceeded, AXIT reserves the right to impose additional charges and/or limit the use of the Application.

6.4   AXIT assumes no responsibility for the lawfulness and the quality of the Content and the use of Content by Company and User. In particular for SaaS services in the United States of America, Company acknowledges that the Application is not designed with security and access management for processing the following categories of information: (a) Nonpublic Personal Information, Protected Health Information, or like information such as covered by the Gramm-Leach-Bliley Act, Health and Insurance Portability and Accountability Act of 1996 for U.S. SaaS business, or similar state or federal statutes applicable to the personal information of natural persons; (b) data that is classified and or used on the U.S. Munitions list, including software and technical data; (c) articles, services and related technical data designated as defense articles or defense services; and (d) ITAR (International Traffic in Arms Regulations) related data, (each of the foregoing and collectively, the "Prohibited Data"). Company shall not, and shall not permit any User or other person to, provide any Prohibited Data to, or process any Prohibited Data through, the Application, the AXIT Systems or any AXIT personnel. Company is solely responsible for reviewing all Content and shall ensure that no Content constitutes or contains any Prohibited Data. Company shall indemnify, defend, and hold AXIT and its Affiliated Companies harmless from any claims, causes of action, or other proceedings and any associated losses, damages, costs (including attorney's fees and costs of litigation) for any associated losses, costs (including without limitation attorneys' fees and costs of litigation) and/or damages AXIT incurs due to a breach of Article 4.3 or this Article.

6.5   Company hereby irrevocably grants all such rights and permissions in or relating to Content to AXIT, its Affiliated Companies, subcontractors and AXIT personnel as are necessary to provide the Application or any related services and as are necessary to enforce and exercise its rights and perform its obligations.

Article 7 - Contact Persons and Service Desk

7.1   Each of the Parties has designated in the Parties Individual Agreement a Contact Person and Administrator for any performance.

7.2   Both Parties shall have the right to change its Contact Person and/or Administrator upon prior written notice to the other Party.

7.3   AXIT shall offer the Company's Administrator and other support services defined persons service desk product support answering questions related to the Application. Such support shall be contactable exclusively via a telephone number (as stated in Parties Individual Agreement) with representatives available from Monday to Friday and from 8:00am to 5:00pm, Central Time, except on holidays.   AXIT may change the hours of such support and/or number by notice to Company.

Article 8 - Fees; Payment Terms

8.1   In consideration of the access and use of the Application as granted, Company agrees to pay AXIT the fees and charges detailed in Parties Individual Agreement (the "Fees").

8.2   Company shall pay all Fees within ten (10) calendar days after the date of the invoice therefore. Company shall make all payments hereunder in EUR, for U.S. SaaS business in USD, by wire transfer to the account specified in Parties Individual Agreement or such other accounts as AXIT may hereafter specify in writing from time to time.

8.3   All Fees and other amounts payable by Company under Parties Individual Agreement are exclusive of taxes and similar assessments. Company is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Company hereunder, other than any taxes imposed on AXIT'S income.

8.4   AXIT services are due for payment as follows:
- monthly basic fee, independently from any transactions, due from the effective date of the Parties Individual Agreement.
- transactions / AX4 Open User: due at the end of each month:
- when being used / accessed at first step (live operations)
- User based products are due when given user is created.
- Service and consultancy works (ticket system) and other support services are invoiced at the end of each month based on an hourly basis.

Only named Users are authorized to order such services.

8.5   Expenses for travels outside AXIT's premises at Frankenthal/Germany are remunerated upon itemization as follows:

Car use	Double rate / km as defined in § 9 Abs. 1 S.3 Nr. 4a S.2 EStG (German tax law)
Ancillary travel expenses	e.g. parking fees, road charges etc. as incurred
Accommodation	Four-star hotel
Additional meal allowance	According to § 4 Abs.5 EStG und LStR 9.6 (German tax law)

Train	1. class incl. extra charges for fast trains etc.
Air travel	Economy class; long haul routes (more than 4h flight duration): business class
Taxi	from and to hotel/railway station/airport and operational site

Travel hours are remunerated at 50% of the agreed daily rates.

8.6   If Company fails to make any payment when due then, in addition to all other remedies that may be available:

(i) AXIT may charge interest on the past due amount at the rate of 1.5% per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law;
(ii) Company shall reimburse AXIT for all costs incurred by AXIT in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and
(iii) if such failure continues for seven (7) calendar days following written notice thereof, AXIT may suspend Company's and all of its End-Users' rights to access the Application until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Company or any other person by reason of such suspension.

8.7   The prices set forth in Parties Individual Agreement shall be valid for a period of one (1) year from the Effective Date. AXIT may increase Fees no more than once annually for any contract year after the first calendar year following the Effective Date by providing written notice to Company at least sixty (60) calendar days Company before the new Fees shall become effective (each a "Fees Increase Notification"). In the event of AXIT's issuance of a Fee Increase Notification, Company shall have a one-time right to cancel the Agreement by delivering AXIT written form within thirty (30) calendar days after the date of AXIT's Fees Increase Notification. The termination is effective from that date where the price increase is announced by AXIT to start. If Company does not exercise such right by delivering AXIT with a written notice of cancellation within such time period, then Company shall be deemed to have to irrevocably waived such special cancellation right, the Fees shall increase as provided in the Fees Increase Notification, and Parties Individual Agreement shall be deemed amended accordingly.

8.8   All amounts payable to AXIT under Parties Individual Agreement shall be paid by Company to AXIT in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than Service Credits according to Service Level Agreements (SLA) as defined in the Parties Individual Agreement) any deduction or withholding of tax as may be required by applicable law.

Article 9 - Warranty

9.1   AXIT declares that Application provided by AXIT to Company substantially meets and complies in all material respects with the functional specifications set forth in Parties Individual Agreement. AXIT

does not warrant that the Application will be error-free or that Company will experience uninterrupted performance.

With the exception of the functional specifications set forth in Parties Individual Agreement, AXIT disclaims any liability for public statements or any other information with regard to the Application, whether originating with AXIT or any third party, such as is contained in brochures, advertisements, catalogues or as is otherwise brought to Company's attention by any media.

9.2   The exclusive remedy and AXIT's sole obligation in the event of any reproducible defect of the Application shall be for AXIT to resolve such defect within a reasonable time by deployment of an Update. Any other rights or remedies because of defects in the Application, including without limitation those for damages, are excluded.

9.3   AXIT cannot ensure that Application is free of Malware or data hacking and, therefore, AXIT accepts no liability resulting from such Malware and/or hacking. Company shall take all appropriate preventative measures and ensure all suitable safeguards are in place before downloading information from Application. Similarly, Company shall take all necessary protective measures and ensure that all appropriate safeguards are in place in order to prevent the introduction of viruses and ensure data protection to the Application.

9.4   EXCEPT FOR THE EXPRESS WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE APPLICATION IS PROVIDED "AS IS" AND AXIT HEREBY DISCLAIMS ALL OTHERS, EXPRESS OR IMPLIED, STATUTORY, OR OTHER AND AXIT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, AXIT MAKES NO WARRANTY OF ANY KIND THAT THE APPLICATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET COMPANY'S OR ANY OTHER PERSON'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES.

Article 10 - Infringement of Third Parties' Intellectual Property Rights

10.1   Except as set forth below in this Article, and subject to the conditions and limitations set forth herein, AXIT shall indemnify, defend, and hold Company harmless for any claim, suit, action or proceeding brought against Company by a third-party to the extent it is based on the Application's infringement of patents, utility models, design patents, copyrights, or trademarks in connection with the Company's permitted use of the Application consistent with the Agreement (collectively "Claims").

If, as a result of such Claim, Company becomes enjoined or it is likely, in AXIT'S opinion, that Company will become enjoined from making use of the Application and AXIT has caused the infringement wilfully or negligently, AXIT shall at its election and its cost - except as set forth below in this Article, and subject to the conditions and limitations stated below in this Article: (i) procure for Company the right to make use

of the Application; (ii) provide Company with a non-infringing replacement product or modify the Application so that it becomes non-infringing, provided that the replaced/modified software meets substantially the same functional specifications as the Application; or (iii) upon cease of use of the infringing Application at AXIT'S request, refund or credit to Company a portion of the Fees equal to the pro rata amount of Fees for the then remaining and unexpired Term of the Agreement beginning with the date that the Company ceased use of the Application. Upon AXIT'S execution of one of the options set out in this Article, AXIT shall be relieved of any further obligation or liability to Company as a result of any such infringement and AXIT shall not be obligated to provide any Application if AXIT has chosen option (iii) above.

Company shall take all reasonable steps to cooperate with AXIT in AXIT' efforts to mitigate any potential damages, costs and expenses incurred by AXIT under this provision.

10.2   AXIT shall only be liable as set out in Article 10.1 if Company gives AXIT prompt written notice of any alleged or threatened Claims, tenders control of the defense of such Claim, does not consent to any judgment or decree or any other act in compromise of any Claim without first obtaining AXIT'S written consent and provides to AXIT all reasonable cooperation and information as may be requested by AXIT.

10.3   AXIT shall not be liable with respect to any Claims arising out of or relating to:

(i)   the use of any modification, adaptation, functional extension or specification originating with, furnished, made or requested by Company;
(ii) the combination with or incorporation into the Application or elements thereof with any other application, product, software, or subassembly not supplied by AXIT;
(iii) test or pilot versions marked as such, which had been provided to Company free of charge;
(iv) false passwords and access handling;
(v)   delayed transmittals of order data between Company and Users and/or missing transmittals of transport data beyond AXIT control;
(vi) false or not existing logistic provider data and identities;
(vii)   undue fulfilment of contracts between Company and its customers; or,
(viii)   third-party systems used by Company and data stemming from such systems.

Company shall defend, indemnify and hold AXIT harmless against any and all claims arising out of the infringement of any third-party rights by Company's and/or Users' combinations of the APPLICATION with other application, products, software and/or subassembly.

10.4   THE FOREGOING SECTIONS STATE THE ENTIRE LIABILITY OF AXIT AND THE EXCLUSIVE REMEDY OF COMPANY WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, EITHER STATUTORY OR EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY PATENT RIGHTS, COPYRIGHTS, MORAL RIGHTS, TRADE SECRETS, TRADE NAMES, SERVICE MARKS, KNOW-HOW AND ANY OTHER SIMILAR RIGHTS OR INTANGIBLE ASSETS REC-

OGNIZED UNDER ANY LAWS OR INTERNATIONAL CONVENTIONS, AND IN ANY COUNTRY OR JURISDICTION IN THE WORLD AS INTELLECTUAL CREATIONS TO WHICH RIGHTS OF OWNERSHIP ACCRUE, AND ALL REGISTRATIONS, APPLICATIONS, DISCLOSURES, RENEWALS, EXTENSIONS, CONTINUATIONS OR REISSUES OF THE FOREGOING NOW OR HEREAFTER IN FORCE. EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE ALL WARRANTIES AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AS MENTIONED BEFORE ARE HEREBY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW.

Article 11 - Limitation of Liability

11.1   IN NO EVENT SHALL AXIT AND/OR ANY OF ITS AFFILIATED COMPANIES BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR OF DATA, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF AXIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE WILL AXIT AND/OR ANY OF ITS AFFILIATED COMPANIES BE LIABLE FOR ANY REPRESENTATION OR WARRANTY MADE TO COMPANY BY ANY THIRD-PARTY. FOR OTHER CLAIMS AXIT'S AND ITS AFFILIATED COMPANIES' CUMULATIVE LIABILITY TO COMPANY FOR ALL CLAIMS OF DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID TO AXIT BY COMPANY ALLOCABLE TO THE COMPANY USE OF THE APPLICATION FOR THE SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM. HOWEVER, AXIT'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED TWENTY-FIVE THOUSAND EURO, FOR U.S. SAAS BUSINESS USD (25.000). THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, STRICT LIABILITY, NEGLIGENCE OR TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY AND COMPANY ACKNOWLEDGES THAT THESE LIMITATIONS SHALL APPLY EVEN IF THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THE LIMITS OF LIABILITY ABOVE SHALL NOT APPLY FOR CLAIMS BASED ON BODILY INJURY (INCLUDING DEATH) AND SUCH DUE TO AXIT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11.2   The rights and remedies explicitly contained in the Agreement are exclusive, not cumulative and the Parties accept these remedies in lieu of all other rights and remedies available at law or otherwise, in contract (including warranty) or in tort (including negligence), for any and all claims of any nature arising between the Parties or any performance or breach arising out of the Agreement. Any claims in accordance with this Article 11 are subject to a limitation period of one (1) year after their coming into existence.

11.3   Company hereby releases, indemnifies and holds harmless AXIT from and against any claims relating to Application and Content brought by an Affiliated Company, User and/or any other third party

against AXIT. AXIT's liability regarding any such claim shall be with regard to the relationship to the Company as limited according to the Agreement.

11.4   The Application may contain links to web sites controlled by third parties. AXIT is not responsible for and does not endorse, accept responsibility for or make any representations in respect of such other web sites. Such web sites are used at Company's and User's own risk.

11.5   The limitations of liability set forth in this Article 11 - Article 11 shall also apply to the personal liability of any officers or employees of the Parties.

11.6   This Article 11 shall survive any termination or expiration of the Agreement.

Article 12 - Interruption of Application

12.1   COMPANY AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH APPLICATION, INCLUDING, THE PUBLIC TELEPHONE, COMPUTER NETWORKS AND THE INTERNET OR TO TRANSMIT INFORMATION, WHETHER OR NOT SUPPLIED BY COMPANY OR AXIT, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT THE ACCESS TO AND/OR THE USE OR OPERATION OF THE APPLICATION. MOREOVER COMPANY ACKNOWLEDGES THAT 3rd PARTY SERVICE PROVIDER MAY ANYTIME INDEPENDENT OF AXIT'S NEGLIGENCE SHUT DOWN ITS SERVICES. AXIT SHALL NOT BE LIABILE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF COMPANY'S ACCESS TO AND/OR USE OF THE APPLICATION.

12.2   Company agrees that the access and/or use of the Application may be interrupted by AXIT for reasons such as but not limited to permit the deployment of an Update, for system maintenance and/or to deploy additional functionality.

Article 13 - Confidentiality

13.1   Unless otherwise expressly provided for herein either Party hereto undertakes to keep confidential, even after termination of the Agreement, any information and data, including, but not limited to commercial or technical information and data disclosed between the Parties in connection with the Agreement, irrespective of the medium in which such information or data is embedded ("Confidential Information"). Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.

13.2   The receiving Party shall disclose Confidential Information only to those of its and its Affiliated Companies' employees, agents, directors, auditors and consultants, who have a reasonable need to know said Confidential Information and who are bound to confidentiality by their employment agreements or otherwise.

13.3   The obligation as per Articles 13.1 and 13.2 above shall, however, not apply to any information which:

(i) was in the receiving Party's possession without confidentiality obligation prior to receipt from the disclosing Party;

(ii) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach by the receiving Party of the Agreement;

(iii) is lawfully obtained by the receiving Party from a third party;

(iv) is developed by the receiving Party or its Affiliated Companies independently from Confidential Information; or

(v) is approved for release by written agreement of the disclosing Party.

The receiving Party may disclose Confidential Information of the disclosing Party if the receiving Party is required to do so by any ruling of a governmental or regulatory authority or court or by mandatory law, provided that written notice of such ruling is given without undue delay to the disclosing Party so as to give the disclosing Party an opportunity to intervene and provided further that the receiving Party uses reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially. Confidential Information which is disclosed in such way must be marked "Confidential".

The Confidential Information shall be kept confidential by the receiving Party with the same degree of care as is used with respect to the receiving Party's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care.

13.4   The receiving Party shall use the disclosing Party's Confidential Information only for the performance under the Agreement and will derive no rights of any kind, in particular no rights of prior use, from the fact that it, as a result of the Confidential Information may, possibly obtain knowledge of patentable inventions for which the other Party may possibly apply for intellectual property rights.

13.5   Upon termination or expiration of the Agreement, all Confidential Information exchanged between the Parties electronically and/or on record-bearing media, as well as any copies thereof, shall, subject to Article 3.3 hereof, upon respective request of the disclosing Party, either be returned to the disclosing Party or be destroyed by the receiving Party.

13.6   This Article 13 - shall survive any termination or expiration of the Agreement.

Article 14 - Data Privacy and Security

14.1   <u>AXIT Systems and Security Obligations</u>. AXIT will employ security measures in accordance with AXIT's data privacy and security policy, as it may be amended from time to time by AXIT, a current copy of which is set forth in the document **"AXIT Privacy and Security Policy"**.

14.2   <u>Data Breach Procedures</u>. AXIT maintains a data breach plan in accordance with the criteria set forth in AXIT's Privacy and Security Policy and shall implement the procedures required therein under such data breach plan on the occurrence of a data breach.

14.3   <u>Company Control and Responsibility</u>. Company has and will retain sole responsibility for: (a) all Content, including its make-up and use; (b) all information provided by or on behalf of Company or any User in connection with the Application; (c) Company's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Company or through the use of third-party services ("Company Systems"); (d) the security and use of Company's and its Users' access credentials; and (e) all access to and use of the Application directly or indirectly by or through the Company Systems or its or its Users' access credentials.

14.4   <u>Access and Security</u>. Company shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Application; and (b) control the content and use of Content, including the uploading or other provision of Content to the Application.

14.5   In case Company collects processes or uses personal data, Company is responsible to comply with statutory and/or individually agreed personal data regulations: In case of breaches, Company infringes and holds AXIT harmless from any 3rd party claims. AXITs personal data and security obligations are defined in the AGREEMENT.

14.6   AXIT and its Affiliated Companies may process Content in anonymized form and, in particular, analyze the same for statistical purposes and/or to enhance the Application.

Article 15 - Reference Customer

AXIT shall be entitled to name Company as reference customer vis-à-vis third parties.

Article 16 - Force Majeure

16.1   Force Majeure means any circumstance which cannot be avoided by a Party despite having exercised all due diligence, including but not limited to

(i) war (whether declared or not), armed conflict or the serious threat of same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization;

(ii) civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;

(iii) act of terrorism, sabotage, cyber-attacks or piracy;

(iv) act of authority whether lawful or unlawful, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalisation;

(v) act of God, plague, epidemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, flood, damage or destruction by lightning, drought;

(vi) explosion, fire, destruction of necessary machines, equipment, factories and of any kind of installation, prolonged break-down of transport, data transfer, telecommunication or electric current;

(vii) general labour disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises.

16.2 Neither Party shall be in breach of the Agreement or otherwise be responsible for any delay or other failure in performing its obligations hereunder if such breach, delay or other failure is attributable to a Force Majeure event.

16.3 A Party seeking relief shall notify the other Party as soon as practicable after the Force Majeure event and its effects on its ability to perform become known to him. Notice shall also be given when such event ceases.

16.4 Any date of delivery or time for performance shall be extended by a period of time reasonably necessary to overcome the Force Majeure event and its consequence, including time for the resumption of the work. Each Party shall make its reasonable efforts to minimize the consequences of the Force Majeure event.

16.5 If one or more Force Majeure events continue(s) for more than six (6) continuous calendar months, either Party may terminate **the Agreement** in writing without any further obligations.

Article 17 - Term and Termination

17.1 The Agreement becomes effective at Effective Date. It shall remain in force from Effective Date plus two (2) years. **THE AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE (1) YEAR PERIODS UNLESS TERMINATED BY EITHER PARTY UPON GIVING WRITTEN NOTICE OF ITS INTENT NOT TO RENEW AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION OF THE THEN CURRENT TERM**.

17.2 The right of immediate termination of the Agreement for cause remains unaffected. Either Party shall, in particular, be entitled - in addition to any other rights such Party may have - to give notice of immediate termination in the event that

(i) the other Party files a petition in bankruptcy or has such a petition involuntarily filed against it, or is placed in an insolvency proceeding, or if an order is issued appointing a receiver or trustee or a levy or attachment is made against a substantial portion of its assets; or

(ii) the other Party has failed in the performance of any material obligation under the Agreement by giving not less than thirty (30) days written notice for remedial actions specifying any such breach.

17.3 AXIT may terminate the Agreement, effective on written notice to Company, if Company fails to pay any amount when due hereunder, and such failure continues more than seven (7) calendar days after AXIT's written notice thereof. AXIT shall be entitled to give notice of immediate termination in the event that Company and/or a User is in breach of any of the obligations set out in Article 4.3.

17.4 In the event of a termination by AXIT pursuant to clauses Article 17.2.ii or 17.3 above, in addition to any other rights that AXIT may have, AXIT may accelerate and declare immediately due and payable any unpaid Fees due for the remainder of the then current term of the Agreement.

17.5 Notice of termination must be given in writing.

17.6 Upon termination of the Agreement, AXIT shall make available to Company the Content on data carriers according to Article 3.3.

Article 18 - Applicable Law

The Agreement is governed by and construed in accordance with the laws of Germany, in case of U.S. SaaS business the State of Texas, each without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the above mentioned law regimes.

Article 19 - Dispute Resolution and Arbitration

19.1 A Party will provide written notice to the other Party of any controversy, dispute or claim arising out of or relating to the Agreement, or to the formation, interpretation, breach, termination, or validity thereof (each a "Controversy"). The parties shall engage in good faith negotiations to resolve the Controversy. Only if the Controversy is not resolved through good faith negotiations within fourteen (14) days of the sending of the written notice of Controversy, the Controversy may be submitted to litigation as provided herein.

19.2 EACH OF THE PARTIES HERETO HEREBY AGREES TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF FRANKENTHAL/GERMANY, FOR U.S. SAAS BUSINESS THE STATE AND FEDERAL COURTS LOCATED WITHIN THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, FOR ALL CONTROVERSIES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. EACH OF THE PARTIES HERETO WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER IN ANY OF THE AFOREMENTIONED COURTS. EACH PARTY FURTHER WAIVES THE RIGHT TO A JURY TRIAL TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

Article 20 - General Provisions

20.1 No modification to, amendment of, or waiver of any provision of the Agreement shall be binding, unless made in writing and duly signed by the Parties which requires for AXIT the signatures of two duly authorized representatives. Any waiver of this requirement for the written form shall likewise be in writing. For avoidance of doubt, electronic communication shall not qualify as written notice or document.

20.2 Neither Party may delegate its obligations or assign its rights hereunder without the prior written consent and approval of the other Party, which consent will not be unreasonably withheld; provided, however, that AXIT may, without the prior written consent of Company, assign, delegate or transfer its obligations and rights hereunder to any of its Affiliated Company or to a successor in business or a business asset acquirer.

20.3 If individual provisions of the Agreement should be or become ineffective, the effectiveness of the remainder of the Agreement shall remain unaffected. In this case, provisions shall be deemed agreed instead of the ineffective provisions, which according to their economic and legal purpose re-

semble the interest of the Parties most closely.

20.4 AXIT shall not be obligated to fulfill the Agreement in all or partially if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

20.5 The Parties Individual Agreement, its annexes, changes and the Terms and Conditions constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous communications, representations, understanding and agreements, either oral or written, between the Parties with respect to such subject matter hereof. Other standard terms and conditions of the Customer referenced to or included in purchase orders, order confirmations or in any other communication between the Parties shall not apply to the Agreement even if not objected to at contract conclusion.