

Subscription Terms

Version 1.0, 23rd of March 2021

1. Definitions	3
2. Hierarchy of Documents	5
3. akenza Free-Trial	5
4. Purchased akenza Platform	5
5. Optional Additional Professional Services	6
6. Use of the Purchased akenza Platform	6
7. Third-party Providers and the akenza Platform	9
8. Fees and Payment for Purchased akenza Platform	9
9. Proprietary Rights	10
10. Confidentiality	11
11. Limitation of Warranty	13
12. Mutual Indemnification	13
13. Limitation of Liability and Exclusion of Damages	14
14. Term and Termination	14
15. Notices	15
16. General Provisions	15
17. Governing Law and Jurisdiction	17

Akenza AG with registered office in Zurich/Switzerland, registered in the Commercial Register of the Canton of Zurich under the company no. CHE-202.142.764 and at Regina-Kägi-Strasse 11, 8050 Zurich, Switzerland (hereinafter "Akenza") provides an online, web-based IoT system, including software, content, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information as Software-as-a-Service ("akenza Platform").

If akenza Platform is subscribed, these Software-as-a-Service Subscription Terms of Akenza Service Provider (hereinafter "Subscription Terms") shall be deemed accepted by the Customer. These Subscription Terms, as well as any additional documents, links or agreements specifically referenced in these Subscription Terms (all together as integral parts hereinafter "Subscription Terms"), govern the contractual relationship between Akenza and the Customer (hereinafter Akenza and Customer each a "Party" and together the "Parties") with regard to the use of the akenza Platform and related services conclusively, unless the Parties have explicitly agreed otherwise in writing (email sufficient). Changes and amendments must be made in writing (email sufficient). Any general terms and conditions of the Customer shall not be applicable.

1. Definitions

- 1.1 **"Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity of either Akenza or Customer. For purposes of this definition, "control" means direct or indirect ownership or control of more than 50% of the voting interests of such entity.
- 1.2 **"Akenza Data"** means data and/or metadata Customer or a Device created with the akenza Platform to define and display IoT device interfaces, such as new devices, device types or platform apps, and any customizations made to or with the akenza Platform. Akenza Data is stored where akenza Platform is installed.
- 1.3 **"Akenza Credentials"** means the username and password that uniquely identifies a User and allows that User to access and use the akenza Platform. Akenza Credentials are stored where akenza Platform is installed.
- 1.4 **"Additional Professional Services"** means any additional services not included in Section 6.1.1 - 6.1.5 of these Subscription Terms, if any, performed by Akenza upon request of Customer, such as for example to develop or consult on a custom application or other solution as set forth in a Statement of Work.
- 1.5 **"Customer Data"** means electronic data and information submitted by or for the Customer, stored in the Data Platform and available to be processed by the akenza Platform.
- 1.6 **"Data Platform"** means the cloud or on premise platform upon which the Customer Data resides, and certain application services with which the akenza Platform interoperates. Examples of Data Platforms include Customer Data that is maintained by the Customer's own data platforms as well as third party platforms like Salesforce.com, Amazon Web Services, Microsoft Azure, Oracle (on premise or cloud), and SAP Hana (on premise or cloud) data platforms.

- 1.7 **“Device”** means any sensor or equivalent device which is connected and licensed to the akenza Platform.
- 1.8 **“Editor”** refers to a role assigned by an Organization Owner or Organization Administrator to a User. Editors have the right to edit on an Organization or Workspace Level (Read & Write), as specified the User Guide.
- 1.9 **“Effective Date”** means the date of the of the subscription or the date the Customer starts a 30-days Free Trial.
- 1.10 **“Intellectual Property Rights” or “IP”** means any rights related to unpatented inventions, patent applications, patents, designs, copyright works, trademarks, service marks, trade names, domain names, mask work, know-how and to all kinds of intellectual property, derivatives thereof, and to any forms of protection of a similar nature of any tangible or intangible values inclusive data and related licenses anywhere in the world.
- 1.11 **“Malicious Code”** means computer viruses, worms, timed attacks, Trojan horse software, logic bombs, or other harmful or malicious computer code, files, scripts, agents or programs.
- 1.12 **“Purchased akenza Platform”** means the paid subscription to the akenza Platform that Customer or its Affiliates purchase after the 30-days Free Trial.
- 1.13 **“Organization Owner”** is the individual authorized representative of the Customer that subscribes to the akenza Platform respectively concludes a Subscription Agreement on behalf of the Customer with akenza, as governed by these Subscription Terms.
- 1.14 **“Organization Administrator”** means those Users designated by the Organization Owner who are authorized to purchase akenza Platform tier subscriptions and create User accounts and otherwise administer Customer’s use of the akenza Platform, as specified the User Guide.
- 1.15 **“Statement of Work”** means a description of the Additional Professional Services to be completed by Akenza upon request of Customer, including project specifications, deliverables, scope, extra compensation, schedule, and payment schedule.
- 1.16 **“Third-Party Applications”** means online, web-based applications and offline software products that are provided by third parties, interoperate with the akenza Platform, and are identified as third-party applications.
- 1.17 **“Tier”** means Elemental, Advanced and Expert subscription option, as specified in Section 6.1.3 of these Subscription Terms, chosen by the Customer.
- 1.18 **“User” or “Users”** means an individual or individuals who are authorized by Customer to use the akenza Platform, for whom subscriptions to the akenza Platform have been purchased, and who have been supplied User identifications and passwords by Customer (or by Akenza at Customer’s request). Users may include but are not limited to Customer’s employees, consultants, contractors, and agents; or third parties with which Customer transacts business.

- 1.19 **“User Guide”** means the online documentation for the Akenza Platform, accessible through <https://docs.akenza.io/> , as updated from time to time.

2. Hierarchy of Documents

In the event of any conflict between these Subscription Terms and the terms of a Statement of Work, the following hierarchy of documents shall apply: (a) the terms of the Statement of Work shall prevail these Subscription Terms.

3. akenza Free-Trial

- 3.1 **Free Trial Term.** Akenza grants to Customer a non-exclusive right to use the akenza Platform on a trial basis free of charge (the **“Free Trial”**) for 30 days as from Customer’s subscription. After the Free Trial, Customer’s right to use the akenza Platform will terminate if Customer has not subscribed to a paid subscription, i.e., the Purchased akenza Platform.
- 3.2 **Free Trial results.** Any Data Customer created with the akenza Platform and any customizations made to or with the akenza Platform by or for Customer during a Free Trial Term will be inaccessible to Customer after expiration of the Free Trial term unless the Customer subscribes to a paid subscription, i.e., the Purchased akenza Platform.
- 3.3 **Free Trial Warranty Indemnity and Liability.** Notwithstanding Sections 11 - 13 of these Subscription Terms, during the Free Trial the akenza Platform is provided **“AS-IS”** without any warranty, indemnity or liability of Akenza.
- 3.4 **Free Trial Support Services.** Akenza may but shall have no obligation to provide support for the use of the akenza Platform during the Free Trial, Section 6 of these Subscription Terms do not apply.

4. Purchased akenza Platform

- 4.1 **Provision of the Purchased akenza Platform.** Akenza grants to the Customer a non-exclusive license to make use of the akenza Platform during the Term of the subscription. Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Akenza regarding future functionality or features.
- 4.2 **Updates to the akenza Platform.** Akenza may update the akenza Platform in its sole discretion, with each update made available to the Customer as it is made available by Akenza to any of its other customers. Customer may order from Akenza updates that are required to bring Customer into compliance with any applicable laws. If Akenza is not in possession of such updates, Akenza will inform Customer accordingly and the Parties will discuss and negotiate the development and implementation of such updates in good faith. Updates to the akenza Platform will be deemed part of Purchased akenza Platform.
- 4.3 **Fees.** As compensation the following fees are payable as specified in Section 8 of these Subscription Terms:

Basic Subscription and Tier-Fees: Basic flat fee pursuant to Tier chosen by Customer.

Device Fees: Fees dependent on the number of Devices activated to the akenza Platform by Organization Owner, Organization Administrator and/or Editor, automatically added or deleted by adding or deleting a Device on the akenza.io. Platform.

5. Optional Additional Professional Services

- 5.1 When requested by Customer, Additional Professional Services may be agreed through a separate Statement of Work. For such additional services or modifications Akenza must be compensated with Additional Fees according to Expenditure by Customer. Akenza will provide an offer in form of a Statement of Work.

6. Use of the Purchased akenza Platform

6.1 Akenza's Responsibilities

- 6.1.1 For Purchased akenza Platform, unless otherwise indicated in a Statements of Work , Akenza will provide at no additional charge during the term of the Subscription Agreement: (a) non-exclusive online access to the akenza Platform in its current version; and (b) basic online support services, including community support webpages at community according to Section 6.1.2 following of these Subscription Terms, online help webpages and user documentation for the akenza Platform at <https://docs.akenza.io/>

- 6.1.2 **Maintenance and Support.** Akenza will provide the following maintenance and support services ("**Maintenance and Support**"):

Preventive and remedial services to maintain the akenza Platform in compliance with specifications specified in the User Guide and in good operating condition;

Online access to technical support bulletins and websites for all updates and upgrades:

The system status and incident report can be found on the Status page:
<https://status.core.akenza.io/>

General support can be found on the Service-Desk page:
<https://docs.akenza.io/faq/service-desk>

- 6.1.3 **Tiers.** The following support and uptime conditions apply depending on the tier chosen by the Customer:

	Elemental	Advanced	Expert
Service Helpdesk	No support	8 x 5	8 x 7
Uptime	Best effort	99.5%	99,9%

6.1.4 Issue Level Definitions. The following issue level definitions are used for corresponding response levels:

Issue Level	Description and Examples
Level 1	Critical production issue affecting all Customer, Users and/or Devices, including unavailability issues with no workaround available.
Level 2	Major functionality is impacted, or significant performance degradation is experienced. Issue is persistent and affects many Devices, Users and/or major functionality. No reasonable availability. Also includes time-sensitive requests.
Level 3	Performance issue or bug affecting some, but not all Devices or Users. Short-term workaround is available, but not scalable.
Level 4	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of Devices/Users. Reasonable workaround available. Resolution required as soon as reasonably practicable.

6.1.5 Response Levels. Akenza provides issue responses according to Issue Levels (described above) as set forth below.

Issue Level	Response Time*	Problem Identification Phase	Resolution Phase
Level 1	Same business day during support operations hours.	Issue acknowledgement to Customer within 1 business hour during support operations hours. Continuous work on diagnosis to commence immediately after acknowledgement. Progress report 2 times each business day during support operations hours.	Continuous work until resolution during support operations hours. If error is determined to be caused by Akenza, resolution will be provided in an emergency patch or in a scheduled patch.
Level 2	Next business day during support operations hours.	Issue acknowledgement to Customer in the first 2 hours of business on the subsequent business day. Progress reports each business day during support operations hours.	Continuous work during support operations hours until resolution. If error is determined to be caused by Akenza, resolution will be provided in a scheduled patch.
Level 3	Two business days during support operations hours.	If issue is caused by Akenza, response to Customer within support operations hours within two business days following the initial communication. Reporting at least once per week.	Fix scheduled in next release.
Level 4	As soon as reasonably practical.	Issue acknowledgment to Customer as soon as reasonably practical, typically within 5 business days. No reporting.	As soon as reasonably practical.

**Akenza must be able to reproduce errors in order to resolve them. Customer agrees to cooperate and work closely with Akenza to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Also, subject to Customer's approval on a case-by-case basis, Users may be asked to provide remote access to their platform account and/or desktop system for Akenza troubleshooting*

purposes.

6.1.6 Excluded Items. Akenza Maintenance and Support does not include any of the following:

- Implementation and setup of the akenza Platform;
- Assistance with non-Akenza products, services or technologies, including Device/Data Platform implementation, administration or use of third-party enabling technologies such as databases, computer networks or communications systems;
- Assistance with Customer's password resets. Users should click the "Forgot your password?" link on the login page or contact their system administrator;
- Assistance with Customer's usernames. For assistance with usernames, Users should contact their system administrator;
- Assistance with lockouts due to incorrect login attempts. Users should contact their system administrator to unlock the account, or wait for the lockout period to expire;
- Assistance in developing User-specific customizations;
- Assistance with other applications not authored by Akenza; or
- Assistance with installation or configuration of hardware, including computers, hard drives, networks or printers.

6.1.7 Akenza will maintain administrative and technical safeguards for protection, security, confidentiality, and integrity of Akenza Data and Akenza Credentials. Such safeguards will include measures for preventing access, use, modification, or disclosure of Akenza Data and Akenza Credentials to anyone other than the Customer and Akenza personnel, except (a) to provide access to the akenza Platform and prevent or address service or technical problems, (b) as expressly permitted in writing by Customer, or (c) as compelled by law.

6.2 Customer Responsibilities

6.2.1 The akenza Platform is provided solely for Customer's benefit, and for the benefit of any Affiliate of Customer specified in a Statement of Work.

6.2.2 Customer acknowledges responsibility for maintaining and/or obtaining security of Customer Data and on the Data Platform.

6.3 Customer Prohibitions. Customer shall not:

6.3.1 Use the akenza Platform to store, transmit, or publish infringing, libelous, or otherwise unlawful or tortious material, material in violation of third-party rights, personal information in violation of any applicable law, financial information of Customer's members or constituents, or material containing Malicious Code.

6.4 Usage Limitations. The akenza Platform may be subject to other limitations according to Data Platform provider(s) and/or specified in Data Platform provider(s) user guide, such as (for example) limits on disk storage space, or limits on the number of calls Customer is permitted to make against the application programming interface. Some Data Platform providers give real-time information to enable Customer to monitor its compliance with such limitations.

7. Third-party Providers and the akenza Platform

- 7.1 No purchase of other third-party products or services is required to use the akenza Platform. In order to connect to and authenticate their Device source, and depending upon the authentication method which Customer uses, Customer may be asked to provide Akenza Credentials. Akenza Credentials will be stored on the akenza Platform.
- 7.2 If Customer installs or enables Third-Party Applications for use with the akenza Platform, Akenza shall not be responsible for any disclosure, modification or deletion of Customer data resulting from any such access by Third-Party Application providers. Most Data Platform services allow Customer to restrict such access by restricting Users or Devices from installing or enabling such Third-Party Applications for use with the akenza Platform.

8. Fees and Payment for Purchased akenza Platform

- 8.1 **Basic Subscription and Tier Fees.** Basic Subscription and Tier fees are flat fees payable monthly as per the end of every month of the subscription, unless the Parties have agreed in quarterly or yearly advance payments.
- 8.2 **Device Fees.** The amount of Device Fees is dependent on the number of Devices activated to the akenza Platform according to Section 8.3 of these Subscription Terms and is also payable monthly as per the end of every month. In case the Parties have agreed in quarterly or yearly advance payments, an estimate of the Device Fees is invoiced in advance and at the end of the respective quarter or year of advance payment the difference between the Device Fees estimated and the Device Fees incurred according to Section 8.3 of these Subscription Terms are either invoiced retrospectively to the Customer or credited to Customer's next invoice.
- 8.3 **Change of number of Devices.** Device Fees are automatically added or deleted by creating or deleting a Device on the akenza Platform by Organization Owner, Organization Administrator and/or Editor. Device Fees added or deleted in the middle of a billing period will be charged pro-rata for that billing period.
- 8.4 **Additional Fees according to Expenditure.** Additional Fees according to Expenditure are payable for Additional Professional Services at CHF 200 per man hour plus VAT and costs spent.
- 8.5 Except as otherwise specified in a Statement of Work, (a) Fees are quoted and payable in Swiss Francs, Euro or United States dollars, (b) Fees are based on Purchased akenza Platform and actual Device usage, (c) payment obligations are noncancelable and fees paid are nonrefundable, subject to a lower Device Fees actually incurred in case of advance payment as set out in Section 8.2 of this Agreement.
- 8.6 **Invoicing and Payment.** Customer will provide Akenza with valid and updated credit card information; or a valid purchase order or alternative documents reasonably acceptable to Akenza. If Customer provides credit card information to Akenza, Customer authorizes Akenza to charge such credit for the Purchased akenza Platform, and actual Device usage as well as

according to a Statement of Work. Such charges shall be made after the first completed month of the Purchased akenza Platform and actual Device usage or according to a billing frequency stated agreed. If the Parties have agreed that the payment will be by a method other than a credit card, Akenza will invoice Customer in advance. Invoiced Fees are due on receipt.

- 8.6.1 **Billing Information.** Customer agrees to provide Akenza with complete and accurate billing and contact information. This information includes Customer's legal company name, mail address, e-mail address, and name and telephone number of an authorized billing contact and Organization Owner. Customer agrees to update this information within 30 days of any change to it. If the contact information provided is fraudulent, Akenza reserves the right to suspend or terminate access to the akenza Platform in addition to any other legal remedies.
- 8.7 **Late Payments.** If any amount owing by Customer under the Subscription Agreement or any other agreement with Akenza.io is 30 or more days overdue or 10 or more days overdue in the case of amounts authorized to be charged to Customer's credit card, Akenza may, without limiting other rights and remedies, accelerate Customer's unpaid fee obligations so that all such obligations become immediately due and payable, and suspend access to the akenza Platform until such amounts are paid in full. Further, Akenza is entitled to an interest on late payments in the amount of 5% p.a. as from the first day of late payment, such as from the 31st day respectively 11th day without a reminder required.
- 8.8 **Payment Disputes.** To receive an adjustment or credit for any billing errors, Customer must contact Akenza in writing within 30 days of the invoice date of the invoice containing the amount in question. Akenza shall not exercise its rights under Section 8.7 if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.
- 8.9 **Taxes.** In addition to the Fees payable and described in this Section 8, taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**") are payable by the Customer. If Akenza pays or collects taxes for which Customer is responsible, any amount paid, plus all costs and expenses incurred by Akenza, relative to such taxes shall be invoiced to and paid by Customer.
- 8.10 **Reconnection Fee.** Akenza reserves the right to impose a reconnection fee in the event (a) Customer's access to the akenza Platform is suspended because of nonpayment; or (b) Customer's access to its Data Platform(s) has been suspended, and thereafter Customer requests access using the akenza Platform.
- 8.11 **Increases in Fees:** Akenza will give notice via email of any increase of Fees at least 60 days in advance.

9. Proprietary Rights

- 9.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Akenza reserves all rights, title and interest in and to the akenza Platform and the Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

Akenza alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to akenza's technology, the akenza Platform, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the akenza Platform. This Subscription Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the akenza Platform, technology or the Intellectual Property Rights owned by Akenza. The Akenza name, logo, and product names associated with the akenza Platform are trademarks of Akenza and no right or subscription is granted to use them.

- 9.2 **Ownership of Akenza Data.** Customer will retain all right, title and interest in and to any data, information or materials provided by Customer, including Akenza Data.
- 9.3 **Suggestions.** Akenza shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into akenza.io any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the akenza Platform.
- 9.4 **Use of Customer Data.** Akenza obtains the right to use any Customer Data for its own purposes to improve and/or further develop the akenza Platform.
- 9.5 **Infringement.** Customer will promptly notify Akenza if Customer learns of a violation of any of Akenza's Intellectual Property Rights. Akenza may but will not be obligated to prosecute such violation at Akenza's expense and to retain the full amount of any sums recovered as damages. Customer will provide Akenza with reasonable cooperation in any such action at Akenza's expense. Provided, however, if any violation relates to Customer's or any of its User's actions or failure to act, Customer shall be responsible for all damage, expenses, including attorney fees, court fees and fines associated therewith as determined by a court of competent jurisdiction or other trier of fact, to the extent that such action is finally determined to have resulted from Customer's area of responsibilities.

10. Confidentiality

- 10.1 **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential 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. Without limiting the foregoing, Confidential Information of each Party shall include the terms and conditions of these Subscription Terms and the Statement of Works, as well as business and marketing plans, technology and technical information, formulas, concepts, product plans and designs, and business processes disclosed by such Party. Customer's Confidential Information shall include Customer Data. However, Confidential Information (other than Customer Data) shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without the

breach of any obligation owed to the Disclosing Party.

- 10.2 **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, Confidential Information shall be received and maintained by each Party in the strictest confidence in accordance with applicable law and shall not be disclosed to any third party. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) and shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Furthermore, neither Party shall use such Confidential Information for any purpose other than those purposes specified in this Agreement.
- 10.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prompt prior notice of such compelled disclosure to allow the Disclosing Party a reasonable opportunity to contest the 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 or authorities to disclose the Disclosing Party's Confidential Information as part of a civil or criminal 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 such Confidential Information.
- 10.4 **Privacy and Disclosure.** Akenza will not access Customer networks or access or use any personal data or Customer-sensitive business information under the Subscription Agreement, except where necessary in the course of the fulfillment of the Subscription Agreement or any Statement of Work or as defined in the Akenza's Data Protection Statement. To the extent applicable for the activities contemplated under the Subscription Agreement or as defined in the Akenza's Data Protection Statement, Akenza will comply with all applicable privacy and security laws to which it is subject, and will not, by act or omission, place Customer in violation of any applicable privacy law.
- 10.5 **Communications from Akenza.** Users may be asked whether or not they wish to receive marketing and other communications from Akenza from time to time. Users may opt out of receiving such marketing communications at that time or at any subsequent time by changing their preference under personal setup. Note that because the akenza Platform is a hosted online application, Akenza occasionally may need to notify all Users (whether or not they have opted out as described above) of important announcements regarding the operation of the akenza Platform.
- 10.6 **Publication Right.** Customer agrees that each Akenza can disclose the fact that Customer is a customer of Akenza (a) in the ordinary course of business, and (b) for promotional or other purposes. The use of the other Customer's company logo to identify Customer as an Akenza customer on Akenza's website or for reference or marketing publications has to be pre-approved by the Customer. For this purposes Akenza is entitled to use the Customer's

trademarks.

11. Limitation of Warranty

- 11.1 Akenza warrants that akenza.io substantially has the functionalities as described in the User Guide, so long as the Customer follows the instructions provided. The Customer's warranty rights are limited to the Akenza's support described in Sections Section 6.1.2 - 6.1.5 of these Subscription Terms during the term of the Subscription. The foregoing warranty is void if a failure of the akenza Platform is due to Customer's act or failure to act (including, but not limited to, using the latest version or updates made available to Customer), the acts of others, or events beyond Akenza's reasonable control. Akenza does not guarantee or warrant that akenza.io will properly function with Third-Party Applications unless specifically so stated herein.
- 11.2 Customer understands and agrees that the akenza Platform is provided "as is" and, other than as expressly stated in Section 11.1, Akenza disclaims all warranties of any kind, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose. Akenza makes no warranty or representation regarding the results that may be obtained from the use of the akenza Platform, regarding the accuracy or reliability of any information obtained through the akenza Platform, or that the akenza Platform will meet Customer requirements, or be uninterrupted, timely, secure or error free. Use of the akenza Platform is at Customer's sole risk. Any material and/or data downloaded or otherwise obtained through the use of the akenza Platform is at Customer's discretion and risk. Except with respect to breach of Section 9.5 (Intellectual Property Claims), Section 10 (Confidentiality) and Section 12.1 (Indemnification by Akenza), the entire risk arising out of use or performance of akenza.io remains with Customer.

12. Mutual Indemnification

- 12.1 **Indemnification by Akenza.** Akenza shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party evidencing that the use of the akenza Platform as permitted hereunder infringes or misappropriates the intellectual property rights of a third party ("**Claim**"), and Akenza shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by Customer in connection with any such Claim, provided that the third party proves (a) of Akenza's prior knowledge of such an infringement of the third party's intellectual property rights and (b) Akenza's prior receipt of an according letter of demand from the third party to the order of Akenza to terminate such infringement by Akenza or its Customer; and further provided that the Customer (c) promptly gives Akenza written notice of the Claim; (d) gives Akenza sole control of the defense and settlement of the Claim; and (e) Customer provides to Akenza all reasonable assistance, at Akenza's expense. If an injunction is issued against the use of the akenza Platform by Customer due to a covered infringement, or if in Akenza's judgment the akenza Platform is likely to become the subject of a successful claim of infringement, Akenza may at its option and expense: (a) procure for Customer the right to continue to use akenza.io or a work-around, or (b) replace or modify such services so they become non-infringing, or (c) reduce the recurring Fees in relation to the decrease of functionalities or availability.

12.2 **Indemnification by Customer.** Customer shall defend Akenza against any claim made or brought against Akenza by a third party alleging that Customer Data, or Customer's use of the akenza Platform in a manner inconsistent with these Subscription Terms ("**Claim**") to the extent that those Claims are finally determined to have resulted from Customer's negligence or willful misconduct in connection with any such Claim; provided, that Akenza (a) promptly gives Customer written notice of the Claim; (b) gives Customer sole control of the defense and settlement of the Claim; and (c) provide to Customer all reasonable assistance, at Customer's expense.

12.3 **Exclusive Remedy.** This Section (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other Party for any type of Claim described in this Section.

13. **Limitation of Liability and Exclusion of Damages**

13.1 **Limitation of Liability.** Except with respect to breaches of Section 9 (Intellectual Property Claims), Section 10 (Confidentiality), or Section 12 (Mutual Indemnification), in no event shall either Party be liable for: (a) any claim arising under or relating to the Agreement, the akenza Platform or any Additional Profession Services provided by Akenza under any theory of liability including contract, strict liability, indemnity, tort (including negligence), or otherwise, or for any special, indirect, incidental, exemplary, punitive, consequential damages, loss of revenues or loss or inaccuracy of data or cost of procurement of substitute goods, services or technology, even if such Party has been notified of the possibility of such damages; or (b) damages in excess of the amount of Fees paid by Customer under the Subscription Agreement during the 12 months prior to the event giving rise to the claim.

13.2 **Responsibility of Customer.** Customer acknowledges that the akenza Platform may experience interruptions arising out of limitations, delays, and other problems commonly occurring in the use of the internet, use of Data Platform (of Customer), use of other cloud platforms, and use of computer communications. Customer acknowledges that Akenza is not responsible for damages, including, but not limited to, incidental or consequential damages arising from such interruptions.

13.3 **Exclusion of Consequential and Related Damages.** Except with respect to breaches of Section 9 (Intellectual Property Claims), Section 10 (Confidentiality), or Section 12 (Mutual Indemnification), in no event shall either Party has any liability to the other Party for any lost profits or revenues or for any indirect, special, incidental, consequential, cover or punitive damages however caused, whether in contract, tort or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

14. **Term and Termination**

14.1 **Free Trial.** The Subscription Agreement commences on the Effective Date and ends after the 30-day Free Trial period unless the Customer purchase a paid subscription respectively subscribes the Purchased akenza Platform before the end of the Free Trial. Akenza may terminate a Free Trial at any time for any reason or no reason in Akenza's sole discretion.

- 14.2 **Term of Subscription Agreement:** If the Customer has subscribed the Purchased akenza Platform, the Subscription Agreement is entered into for an unlimited period of time and may be terminated by each Party with 30 day advance termination notice with a click on the termination -button on the akenza Platform and ends with the termination of all Device subscriptions under the Subscription Agreement and/or completion or termination of the last Statement of Work executed under the Subscription Agreement.
- 14.3 **Termination for Cause.** A Party may terminate this Agreement for cause: (a) 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 (b) 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 with immediate effect without advance notice.
- 14.4 **Refund or Payment upon Termination.** Upon any termination for cause by Customer, Akenza shall refund any prepaid Fees covering the remainder of the Term of all subscriptions after the effective date of termination. Upon any termination for cause by Akenza, Customer's payment obligations likewise end on the termination date; however, Customer shall not be entitled to a refund of any prepaid Fees. Further, Customer shall pay any unpaid Fees otherwise due as until the termination date, and Customer shall pay Akenza for Additional Professional Services satisfactorily completed (and partially completed if termination is as a result of a breach by Customer) and expenses incurred up to the date of notice of termination.
- 14.5 **Surviving Provisions.** Section 8 (Fees and Payment for Purchased akenza.io), 9 (Proprietary Rights), 10 (Confidentiality), 11 (Limited Warranty), 12 (Mutual Indemnification), 13 (Limitation of Liability and Exclusion of Damages), 14.4 (Refund or Payment upon Termination), 15 (Notices), 16 (General Provisions) and 17 (Governing Law and Jurisdiction) shall survive any termination or expiration of this Agreement. Shall such the Subscription Agreement be terminated during or with the Free Trial, the above-mentioned Section 10 (Confidentiality) shall only survive for five (5) years after termination of this Agreement.
15. **Notices**
- 15.1 **Notices.** If notice or demand is required or permitted to be given or served by either Party to or on the other, the notice or demand may be given via the akenza Platform or by email. **Email Address:** Emails sent to the last email addressed communicated to the other Party with confirmation of receipt are deemed to be received.
16. **General Provisions**
- 16.1 **Export Compliance.** Each Party shall comply with the export laws and regulations of Switzerland and other applicable jurisdictions in providing and using the akenza Platform. Without limiting the foregoing, (a) each Party represents that it is not named on any Swiss list of persons or entities prohibited from receiving exports, (b) Customer shall not permit Devices or Users to access or use the akenza. Platform in violation of any Swiss export restrictions or prohibition, and (c) Customer will not export, re-export, divert, transfer or

disclose any portion of the akenza Platform or any related technical information or materials, directly or indirectly, in violation of any applicable export law or regulation.

- 16.2 **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership or joint venture or employment relationship between the Parties.
- 16.3 **Waiver and Cumulative Remedies.** No waiver of any provision of these Subscription Terms will be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. A waiver of any provision of these Subscription Terms by either Party will not be construed as a waiver of any other provision of these Subscription Terms, nor will such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
- 16.4 **Severability.** If any provision of these Subscription Terms is held by a court of competent jurisdiction to be contrary to law or invalid, the provision shall be deemed to be replaced so as best to accomplish the economic objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Subscription Terms shall remain in effect.
- 16.5 **Language and Headings.** These Subscription Terms have been prepared in the English language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. The captions and headings appearing in these Subscription Terms are for reference only and will not be considered in construing this Agreement.
- 16.6 **Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns. Akenza's use of personnel from any of its subsidiaries and Affiliates to perform professional services shall not be deemed an assignment.
- 16.7 **Entire Agreement.** These Subscription Terms, as well as any additional documents, links or agreements specifically referenced in these Subscription Terms and Statements of Work (all together Subscription Agreement), constitute the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of the Subscription Agreement shall be effective unless in writing or accepted electronically by the Party against whom the modification, amendment or waiver is to be asserted.
- 16.8 **Force Majeure.** Neither Party shall be liable to the other for any loss or damage due to delay or failure to perform due to flood, riot, insurrection, fire, earthquake, strike, communication line failure and power failure, explosion, act of God, death or incapacitating illness or injury to

key personnel, or any other force or cause beyond the control of the Party.

17. Governing Law and Jurisdiction

- 17.1 **Governing Law.** This Agreement and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with the substantive laws of Switzerland, excluding conflict of law rules and treaties
- 17.2 **Jurisdiction.** The parties hereto consent to the exclusive jurisdiction of the competent courts in Zurich (Zurich 1), Switzerland. However, Akenza is entitled to prosecute the Customer at the place of its registered offices.