



Customer Agreement (SaaS)

This Customer Agreement is between IXUP Limited ABN 85 612 182 368 (**IXUP**) and the purchaser of the Service subscription specified in the Subscription Details.

1 Service

1.1 Access and use. IXUP grants Customer a non-exclusive and non-transferable right to:

- (a) access and use the Service; and
- (b) permit its End Users to access and use the Service,

in each case, via the internet, solely for the Approved Purpose during the Subscription Term, subject to compliance with the terms of the Agreement.

1.2 Service Restrictions. Customer must ensure that:

- (a) neither Customer nor any End User accesses, uses, uploads data or logic to, uses the output of, or otherwise exploits the Service, except as permitted under clause 1.1;
- (b) neither Customer nor any End User reverse engineers, decompiles or disassembles the Service, views or gains access to the source code to the Service, or uses the Service to provide any product or service that is an alternative, substitute or competitor to the Service;
- (c) neither Customer nor any End User copies, develops any modification, enhancement, derivative work or other development of the Service or incorporates any Customer, End User or third party material into the Service (except as expressly permitted under the Approved Purpose);
- (d) neither Customer nor any End User uploads to the Service any material that is unlawful, harmful, malicious, threatening, defamatory, obscene, infringing, offensive, sexually explicit, violent or discriminatory;
- (e) neither Customer nor any End User removes any product identification, proprietary, trade mark, copyright or other notices applied to or contained in the Service;
- (f) neither Customer nor any End User accesses or uses the Service by any unauthorised means, including using any bot, script, spider, crawler, scraper or automated device;
- (g) no person other than Customer, and its authorised End Users, accesses or uses the Service under Customer's account; and
- (h) it promptly notifies IXUP in writing if Customer wishes to permit a person other than Customer, or its authorised End Users, to access and use the Service.

1.3 Support Services. The Service includes the provision of the Support Services for the duration of the Subscription Term. Customer must provide all information and assistance reasonably required by IXUP to perform the Support Services.

1.4 Service Levels. IXUP must use its best endeavours to provide the Service in a manner that meets or exceeds the Service Levels.

1.5 Professional Services. If Customer wishes to purchase Professional Services from IXUP, the parties must agree a SOW. Once executed by both parties, a SOW forms part of the Agreement.

1.6 Evaluation use. If IXUP permits Customer to evaluate the Service prior to purchasing a subscription:

- (a) the right in clause 1.1 is limited to access and use of the Service for a period of up to 30 days (**Evaluation Period**) solely for Customer's internal evaluation of the Service (without any right to use the Service for commercial, external or any other purpose);
- (b) IXUP provides the Service "as is" and excludes all warranties, indemnities, obligations and liabilities under the Agreement for the duration of the Evaluation Period; and
- (c) upon expiry of the Evaluation Period, Customer must immediately cease using and delete its copy the Service unless Customer purchases a subscription to the Service, in which case all terms of the Agreement apply from commencement of the paid Subscription Term.

2 Customer responsibilities

2.1 Usage responsibilities. Customer uses the Service at its own risk and is solely responsible for:

- (a) ensuring that the Service is accessed and used strictly in accordance with the Agreement. Customer is responsible for each act and omission of an End User in connection with the Agreement as though it were an act or omission of Customer;
- (b) ensuring that the Approved Purpose, Customer's and each End User's use of the Service, and all data and logic uploaded to the Service, complies with all applicable laws, regulations and contractual obligations;
- (c) obtaining all consents, licences and approvals necessary to lawfully collect, upload, store, process and disclose all data and logic (including that protected by Intellectual Property Rights, confidentiality, or privacy) uploaded to the Service, all output of the Service and the Approved Purpose;
- (d) implementing all steps and controls necessary to secure and keep confidential all user credentials issued to Customer and its End Users;
- (e) providing all support and maintenance required by its End Users other than the Support Services; and
- (f) the accuracy, truthfulness, completeness, veracity and legality of the output of the Service and the Approved Purpose.

3 Fees, invoicing and payment

3.1 Fees. The Fees are payable in consideration of IXUP's supply of the Service and any Professional Services. IXUP may increase its Fees at any time, provided that any such increase is not payable by Customer until expiry of the current Subscription Year.

3.2 Invoicing and payment. IXUP must issue invoices for the Fees to Customer at the times specified in the Subscription Details or applicable SOW. Customer must pay all Fees invoiced by IXUP, without any set-off or deduction and in immediately available funds, by the method and within the period specified in the Subscription Details or SOW. All Fees invoiced by IXUP are non-cancellable and non-refundable.

3.3 Late Payment. If Customer fails to pay any Fees (that are not disputed in good faith) by the due date for payment, IXUP may:

- (a) suspend Customer's right to access and use the Service, provided that IXUP has given Customer notice of the failure and Customer has not rectified the failure within 14 days of the date of such notice; and
- (b) charge interest at a rate of 2 percent per annum above the current published overdraft rate of the Commonwealth Bank of Australia,

in each case, from the due date for payment until the date that payment is made by Customer.

3.4 Verification. IXUP may on 14 days' notice conduct an audit of Customer's use of the Service and compliance with the Agreement from time to time during the Subscription Term. Customer must provide all access to its End Users, records, premises and personnel reasonably requested by IXUP in connection with any such audit. IXUP must bear the costs of any such audit unless the audit reveals that Customer has used, or permitted the use of, the Service in breach of the Agreement (including use in excess of any limitations set out in the Subscription Details), in which case, Customer must immediately:

- (a) pay to IXUP all additional Fees payable in respect of any excess use (at IXUP's then current list prices) in addition to IXUP's reasonable audit costs; and
- (b) take all other steps required to remedy the breach of the Agreement and prevent its recurrence at its own cost.

3.5 Taxes. The Fees are exclusive of all taxes, levies, withholdings, duties and other amounts imposed by taxing authorities. Where a supply is a taxable supply, all amounts payable must be increased by the amount of GST payable in relation to the supply. All GST must be paid at the time any payment for any supply to which it relates is payable (provided a valid tax invoice has been issued for the supply). In this clause, **GST, tax invoice and taxable supply** have the meanings given to them in the *A New Tax Systems (Goods and Services Tax) Act 1999* (Cth).

4 Intellectual Property Rights

4.1 Ownership. All Intellectual Property Rights in and to the Service and output of the Professional Services, including those in any copy, modification, enhancement, configuration, derivative work or other

development of the Service developed by or on behalf of Customer and End Users, vests or remain vested in IXUP or its licensors. If any such Intellectual Property Right vests in Customer or End Users, Customer hereby assigns, and must procure that each End User assigns, that Intellectual Property Right to IXUP with immediate effect. Customer must take all further steps (including execution of documents) necessary to give effect to this clause.

4.2 No other rights. Neither Customer nor any End User receives any right, title or interest in or to the Service other than the right to access and use it expressly granted to Customer under clause 1.1.

4.3 Notice of infringement. Customer must immediately notify IXUP in writing upon becoming aware of any:

- (a) infringement or unauthorised use of the Service by any person, including any End User; or
- (b) claim by any person that use of the Service by Customer in accordance with the Agreement infringes any copyright or patent owned by that person in Australia (**IP Claim**).

4.4 If the Service is the subject of an IP Claim, IXUP may (at its cost and option) either:

- (a) procure the right for Customer to continue using the Service;
- (b) modify the Service such that it no longer infringes the relevant Intellectual Property Rights; or
- (c) terminate the Agreement and provide Customer with a pro-rata refund of any Fees paid in advance for use of the Service.

5 Customer Data, privacy and data security

5.1 Rights. As between IXUP and Customer, all rights in and to the Customer Data vest or remain vested in Customer at all times.

5.2 Licence. Customer:

- (a) grants IXUP, its sub-processors and their respective personnel the right to Process the Customer Data; and
- (b) warrants that it has obtained all consents, licences and approvals from individuals, End Users and other third parties necessary to enable IXUP, its sub-processors and their respective personnel to Process the Customer Data,

in each case, solely for the purposes of providing, monitoring usage statistics, billing, capacity planning for, and improving the Service.

5.3 Privacy. Each party must comply with all applicable Privacy Laws in Processing any Personal Information comprised in the Customer Data. IXUP must promptly:

- (a) refer individuals who request access to that Personal Information to Customer;
- (b) notify Customer on becoming aware of any complaint or investigation relating to that Personal Information; and
- (c) provide assistance reasonably required by Customer (at its cost) to respond to such request, complaint or investigation where

Customer is unable to do so itself through the Service.

Personal Information other than that comprised in the Customer Data will be Processed in accordance with IXUP's privacy policy.

5.4 Data Security. IXUP must take reasonable steps to protect the Customer Data against loss, unauthorised access, modification and disclosure (**Data Breach**), including:

- (a) not storing the Customer Data in, or disclosing the Customer Data to, any location other than the Environment;
- (b) not disclosing the Customer Data except to its sub-processors and their respective personnel for the purpose of performing the Agreement; and
- (c) maintaining appropriate business continuity and disaster recovery measures for the Service, provided that Customer is solely responsible for regularly downloading and backing up its own Customer Data using the Service.

5.5 Data Breaches. If either party becomes aware of any actual or suspected Data Breach affecting the Customer Data:

- (a) that party must promptly notify the other party in writing, including in such notice all known details of the actual or suspected Data Breach;
- (b) IXUP must provide Customer with information and assistance reasonably required by Customer to investigate and assess the actual or suspected Data Breach;
- (c) Customer is solely responsible for determining whether the actual or suspected Data Breach is notifiable under Privacy Laws, subject to clause 5.5(e);
- (d) Customer must not mention IXUP in any subsequent notification or communication relating to the actual or suspected Data Breach without IXUP's prior written approval; and
- (e) IXUP may make a notification or communication about the Data Breach if Customer fails to do so and IXUP is required to do so under applicable Privacy Laws.

5.6 APRA. If Customer is regulated by APRA and CPS 231 and CPS 234 apply, IXUP must:

- (a) meet with Customer at least once in each calendar year during the Subscription Term to review the arrangements contemplated by the Agreement;
- (b) provide reports with content and frequency agreed by the parties in the Subscription Details;
- (c) conduct regular testing of the information security controls used to protect the Customer Data; and
- (d) permit Customer to conduct an audit of IXUP's records, systems and premises relating to the Agreement to verify IXUP's compliance with this clause 5, provided that Customer provides IXUP with at least 20 Business Days' notice of the audit, uses an independent third party auditor (that has agreed to obligations of confidence no

less restrictive than clause 6) to conduct the audit and provides written evidence to IXUP that APRA requires the audit to be undertaken;

- (e) obtain and maintain comprehensive insurances from a reputable insurer commensurate to its obligations under the Agreement.

6 Confidentiality

6.1 Obligation of confidence. Each party (**Recipient**) must ensure that it keeps confidential and does not use or disclose any Confidential Information of the other party (**Discloser**) except as permitted by this clause 6.

6.2 Permitted use. The Recipient may use the Confidential Information of the Discloser solely to the extent necessary to exercise its rights and obligations under the Agreement.

6.3 Permitted disclosures. The Recipient may disclose Confidential Information of the Discloser:

- (a) to the Related Bodies Corporate, personnel and professional advisers of the Recipient that need to know the Confidential Information for the purposes of the Agreement and that are subject to binding obligations of confidence at least as stringent as those set out in this clause;
- (b) to the extent required by law or the rules of any stock-exchange; and
- (c) with the prior written consent of the Discloser.

To avoid doubt, either party may make public statements about the existence of the Agreement and the fact that it is a supplier or customer of the other (as applicable), including referencing the other party's name and logo, without being in breach of this clause.

7 Warranties and indemnities

7.1 Warranties. IXUP warrants that:

- (a) the Service will operate substantially in accordance with its published specifications during the Subscription Term; and
- (b) it will provide the Service and any Professional Services with due care and skill.

IXUP must, as Customer's sole and exclusive remedy or resupply any part of the Service or Professional Service which does not comply with the warranties in this clause within a reasonable period of confirmation of the non-compliance.

7.2 No other terms. To the extent permitted by law, IXUP excludes all conditions, warranties and guarantees other than those set out expressly in the Agreement. Without limitation, IXUP does not warrant that the Service or any Professional Service will be:

- (a) continuous, free from errors, omissions, defects, security risks or vulnerabilities; or
- (b) fit for any purpose or meet the requirements of Customer or any End User.

7.3 Non-excludable terms. If any condition, warranty or guarantee cannot be excluded at law, then to the extent permitted by law, IXUP's liability for breach of such condition, warranty or guarantee is limited (at IXUP's option) to resupply of the Service or

Professional Service or payment of the cost of the same.

7.4 IXUP indemnity. IXUP must indemnify Customer against all loss and damage suffered or incurred by Customer arising out of or in connection with:

- (a) any IP Claim;
- (b) any breach of clause 5 or 6 by IXUP,

in each case, except to the extent that the claim or breach is caused or contributed to by Customer, End Users or any third party product or service.

7.5 Customer indemnity. Customer indemnifies IXUP and its Related Bodies Corporate against and must pay on demand all loss and damage suffered or incurred by any of them arising out of or in connection with:

- (a) any claim relating to the access to, use of, uploading of data or logic to, use or reliance on any output of the Service or Approved Purpose by Customer or End Users, including any claim made by a third party; and
- (b) any breach of clause 1.2, 2.1, 5 or 6 by Customer,

in each case, except to the extent that the claim or breach is caused or contributed to by IXUP.

7.6 Conduct of claims. The indemnification obligation of a party (**indemnifying party**) under clause 7.4 or 7.5 in respect of any third party claim is subject to the other party:

- (a) promptly notifying the indemnifying party of the third party claim;
- (b) permitting the indemnifying party to control the defence of the third party claim; and
- (c) providing (at the indemnifying party's cost) all information and assistance reasonably requested by the indemnifying party in connection with the defence of the third party claim.

7.7 Sole and exclusive remedy. Without prejudice to the termination rights of each party:

- (a) clause 7.4 sets out Customer's sole and exclusive remedy in respect of the matters indemnified by IXUP; and
- (b) clause 7.5 sets out IXUP's sole and exclusive remedy in respect of the matters indemnified by Customer.

8 Liability

8.1 Exclusion of Indirect Loss. To the extent permitted by law, each party excludes any and all liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence) or any other basis in law or equity for any Indirect Loss.

8.2 Limitation of liability. The liability of a party arising out of or in connection with the Agreement, whether in contract, tort (including negligence) or any other basis in law or equity, in any Subscription Year is limited to an amount equal to the Fees paid or payable by Customer under the Agreement in that Subscription Year.

8.3 Unlimited liability. The limitation of liability in clause 8.2 does not apply to the liability of a party:

- (a) under the indemnity given by that party against breach of clause 5 which is limited to \$1,000,000;
- (b) under any other indemnity given by that party;
- (c) to pay Fees that are due and payable; or
- (d) for any matter in respect of which liability may not be limited at law.

8.4 Injunctive relief. Customer acknowledges that damages are not a sufficient remedy for any breach of clause 1.1, 1.2, 2.1, 5, or 6 of the Agreement and that IXUP is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or anticipated breach of those clauses (in addition to any other remedies).

9 Term, suspension and termination

9.1 Subscription Term. The Agreement will remain in force for the Subscription Term, unless terminated earlier in accordance with this clause 9.

9.2 Suspension. IXUP may suspend the licence granted pursuant to clause 1.1 during any period in which Customer is in breach of the Agreement (subject to clause 3.3(a) in the case of late payment).

9.3 Termination for cause. A party may terminate the Agreement with immediate effect on written notice if the other party:

- (a) commits a material breach of the Agreement and fails to remedy that breach within 14 days of receipt of a notice specifying the breach and requiring it to be remedied. Any breach by Customer of clauses 1.1, 1.2, 2.1, 3.2, 5, or 6 is a material breach for the purposes of this clause;
- (b) becomes subject or threatens to become subject to, any form of insolvency or bankruptcy proceeding, appoints a liquidator, receiver or administrator, enters into an arrangement with its creditors, ceases to trade or do business in the ordinary course or is otherwise unable to pay its debts as and when they fall due.

9.4 Consequences of termination or expiry. On termination or expiry of the Agreement:

- (a) all rights to the Service granted under the Agreement cease immediately and Customer must immediately cease using the Service;
- (b) IXUP has no further obligation to retain the Customer Data, provided that IXUP permits Customer to access the Service for the sole purpose of downloading the Customer Data for a period of 30 days following expiry or termination; and
- (c) Customer must immediately pay IXUP all Fees due and payable as at the date of termination or expiry and, if IXUP terminates pursuant to clause 9.3, all Fees payable for the remainder of the Subscription Term.

10 Miscellaneous

10.1 Entire agreement. This Customer Agreement, the Subscription Details and any SOW are the entire agreement between the parties in respect of their

subject matter. In the event of any inconsistency between the terms of this Customer Agreement, the Subscription Details and any SOW, the terms of the document listed first will prevail to the extent of the inconsistency.

10.2 Amendment. IXUP may amend this Customer Agreement at any time by posting the amended version of this Customer Agreement at <https://ixup.com/customer-agreement>. Any amended version of this Customer Agreement will only apply to subscriptions entered into following the date of the amendment to this Customer Agreement.

10.3 Force Majeure Events. IXUP is not liable for any delay nor failure to perform its obligations under the Agreement to the extent such delay or failure is due to a Force Majeure Event.

10.4 Severance. If a provision of the Agreement is unenforceable, the provision will be read down to the extent necessary to avoid that result and if the provision cannot be read down to that extent, it will be severed without affecting the validity and enforceability of the remainder of the Agreement.

10.5 Transfer. Customer must not assign, subcontract, novate or otherwise dispose of its rights or obligations under the Agreement without the prior written consent of IXUP.

10.6 Waiver. A party waives a right under the Agreement only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

10.7 Relationship of the parties. The parties are and will remain independent contractors. Nothing contained in the Agreement will be construed to create an agency, joint venture, partnership or other relationship between the parties.

10.8 Governing Law. The Agreement is governed by the laws of New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia (and relevant appellate courts) and waives any objection to proceedings being brought in those courts.

11 Definitions

In this Customer Agreement, these terms have the following meanings:

Agreement means the agreement consisting of this Customer Agreement, the Subscription Details and any SOW.

Approved Purpose means a specific approved use of the Service specified in the Subscription Details.

Confidential Information means information that is marked, designated or by its nature confidential relating to the business or affairs of a party or its Related Bodies Corporate:

- (a) including the terms of the Agreement and, in the case of IXUP, all source code to and pricing for the Service; but
- (b) excluding any such information that is in the public domain (other than as a result of a breach of confidence).

Customer Data means any data, information or material uploaded to, or Processed through, the Service by Customer or End Users.

End User means any person who access or uses the Service through Customer's subscription.

Environment means IXUP's computing environment specified in the Subscription Details.

Evaluation Period is defined in clause 1.6(a).

Fees means the fees, costs and expenses for the supply of the Service specified in the Subscription Details and any Professional Services specified in the applicable SOW.

Force Majeure Event means any incident, event, act or omission beyond the reasonable control of that party, including any acts of God, strikes, civil strife, riots, wars, fire, explosion, storm, flood, earthquake, failure of communications networks, subsidence or epidemics.

Indirect Loss means:

- (a) loss of profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of use, loss or corruption of data, loss of reputation, loss of goodwill, or loss of contract; and
- (b) any loss that does not arise naturally or according to the usual course of things from a breach, act or omissions relating to the Agreement.

Intellectual Property Rights means intellectual property rights, including existing and future copyright, rights in designs, patents, semiconductors and circuit layouts and rights in trade marks, trade names and service marks, in each case, whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of the Agreement.

IP Claim is defined in clause 4.3(b).

IXUP Support Services Policy means the document located at <https://ixup.com/support-services-policy/>.

Personal Information means information or an opinion about an identified individual or an individual who is reasonably identifiable, including 'personal information' as defined in the *Privacy Act 1988* (Cth).

Privacy Law means any applicable law governing the Processing of Personal Information, including the *Privacy Act 1988* (Cth).

Process means to collect, store, use, copy, disclose or perform any other set of operations on.

Professional Services means any support, implementation, training, data migration or other service not forming part of the Service.

Related Body Corporate is defined in section 50 of the *Corporations Act 2001* (Cth).

Service means the IXUP Secure Data Analytics software delivered via the internet as a service, including any Updates.

Service Level means applicable service levels set out in the IXUP Support Services Policy.

SOW means a statement of work setting out the details of the Professional Services to be provided by

IXUP, including the agreed scope and fees for the Professional Services.

Subscription Details means the details of Customer's subscription to the Service as specified in IXUP's [customer relationship management system], including the applicable Approved Purpose, Environment, Fees and Subscription Term.

Subscription Term means:

- (a) the initial term of Customer's subscription to the Service specified in the Subscription Details, including any Evaluation Period; and
- (b) successive 12 month renewal terms thereafter, unless Customer provides notice of non-renewal at least 60 days' prior to the expiry of initial term or renewal term (as applicable).

Subscription Year means a period of 12 months from the commencement of Subscription Term or an anniversary of that date.

Support Services means:

- (a) online, email or telephone support for Service defects that require access or changes to the source code for the Service; and
- (b) making Updates available from time to time,

in each case, in accordance with the IXUP Support Services Policy. The Support Services exclude help desk, diagnostic, onsite and other first and second line support services.

Updates means any new version, release, update, patch, fix, configuration or other modification of the Service made available by IXUP to its customers generally during the Subscription Term.