

# Program License Agreement

## General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"Axibase" is Axibase Corporation, a Delaware corporation, or one of its subsidiaries.

"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level is measured by the number of program instances. The PoE is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement is the complete agreement between You and Axibase regarding the use of the Program. It replaces any prior oral or written communications between You and Axibase concerning Your use of the Program.

## 1. Entitlement

### *License*

The Program is owned by Axibase, and is copyrighted and licensed, not sold.

Axibase grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may use the Program up to the level of use specified in the PoE.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

Axibase may terminate Your license if You fail to comply with the terms of this Agreement. If Axibase does so, You must destroy all copies of the Program and its PoE.

#### *Program Transfer*

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

## **2. Charges**

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. Axibase does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify Axibase or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

## **3. Limited Warranty**

Axibase warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. Axibase does not warrant uninterrupted or error-free operation of the Program or that Axibase will correct all Program defects. You are responsible for the results obtained from the use of the Program.

Axibase provides You with access to information on known Program defects, defect corrections, restrictions, and workarounds subject to Software Maintenance Agreement executed separately from this Agreement.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the Axibase databases, You may return the Program and its PoE to the party (either Axibase or its reseller) from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

#### **4. Limitation of Liability**

Circumstances may arise where, because of a default on Axibase's part or other liability, You are entitled to recover damages from Axibase. In each such instance, regardless of the basis on which You may be entitled to claim damages from Axibase, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Axibase is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to Axibase's Program developers and resellers.

UNDER NO CIRCUMSTANCES IS AXIBASE, ITS PROGRAM DEVELOPERS OR RESELLERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;
2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

#### **5. General**

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow Axibase to store and use Your contact information, including names, phone numbers, and e-mail addresses. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of Axibase for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor Axibase will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor Axibase is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will Axibase be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which Axibase is legally liable.

#### **6. License Information**

The Programs listed below are licensed under the terms and conditions of this Agreement.

Program Name: Axibase Collector

Specified Operating Environment

The Program's specifications and specified operating environment information may be found in documentation accompanying the Program.

## **7. Use of the Program**

Programs acquired under this Agreement are for use within your enterprise only and may not be used to provide service external to your enterprise without our prior written consent. You may not assign, transfer or otherwise remarket Programs acquired at a discount or allowance.

## **8. Additional Unlicensed Programs**

The media on which the Program is delivered may contain additional programs for which You are not licensed. You may only use the Program(s) for which You have obtained a license from Axibase, up to the level specified, as set forth in the relevant PoE, invoice or other document from Axibase describing Your entitlement to the Program(s).

## **9. Source Code**

Some of the components of the Program may be provided in source code form. Notwithstanding anything to the contrary in this Agreement, support is only provided for the unmodified, binary code versions of these components included in the Program packaging, and not for the source code for these components or for any modifications of such components you may create.

## **10. Data Encryption Technology**

The Programs contain encryption technology that is subject to special export licensing requirements by the US Department of Commerce. They may also be subject to export and import requirements of other countries. YOU MUST ABIDE BY ALL APPLICABLE LAWS, RULES AND REGULATIONS REGARDING THE EXPORT OF SUCH CODE. FURTHER, YOU MUST ENSURE THAT ALL USERS WHO RECEIVE THE PROGRAM FROM YOU COMPLY WITH THE TERMS OF THIS AGREEMENT.

## **11. Confidentiality**

You agree to treat the following as "Axibase Confidential Information" regardless of whether they contain restrictive markings indicating the confidential nature thereof or have been identified as Axibase Confidential Information prior to disclosure: (a) the Program, (b) any information provided to You by Axibase with regard to the Program including, but not limited to, Program related materials such as specifications, plans, trends, strategies, benchmarks, performance characteristics, comparisons and other assessments of the Program, (c) any information related to Your access to the Program including, but not limited to, passwords or other access codes, (d) ) all ideas, concepts, know-how, and techniques contained in the Program and (e) all data, feedback, suggestions and/or written materials that You provide to Axibase related to the Program. You are authorized to use the Axibase Confidential Information for the purpose for which it was disclosed or otherwise for the benefit of Axibase. Notwithstanding any other terms of this Agreement, you agree not to communicate, publish, disseminate or otherwise discuss with or disclose to any third party the Axibase Confidential Information (including but not limited to articles, papers or other

written materials pertaining to the Axibase Confidential Information) prior to Axibase making such Axibase Confidential Information publicly available without a non-disclosure obligation.

You agree to use the same care and discretion to avoid disclosure of the Axibase Confidential Information as You use with Your own similar information which You do not wish to disclose, but in no event shall such degree of care be less than reasonable care. Your obligations with respect to the Axibase Confidential Information shall continue for a period of two years from your receipt of the Axibase Confidential Information. . You agree not to disclose to Axibase any information that is considered confidential or proprietary to You or any third party except under a signed, separate, written confidential agreement.

Notwithstanding the existence of any confidentiality or other agreement You may have with Axibase pertaining to confidential information, the preceding paragraphs shall govern the treatment of the Axibase Confidential Information.

The above confidentiality terms apply to the following Programs or components:

Axibase Collector

Axibase may use your name in any customer reference list or in any press release issued by Axibase regarding the licensing of the.

## **12. Governing Law, Jurisdiction, and Arbitration**

This Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles. The parties consent to the personal and exclusive jurisdiction of courts located in California. Waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right.