

## Terms and Conditions

These Terms and Conditions ("Agreement") are between American RX Group, LLC, a Minnesota limited liability company with offices located at 1010 Summit Avenue, Sauk Rapids, MN 56379 ("ARXG") and the individual or entity executing a purchase order or other ordering document ("Order") that references this Agreement ("Customer"). This Agreement is effective upon the date of last signature of the applicable Order ("Effective Date").

1. **Purpose of Agreement.** ARXG offers a full suite of medication take back products. As defined herein, the products include the Kiosk, Liners, Kiosk Management System and Portal (collectively, the "Products"). Customer desires to acquire and/or use one or more Products, as indicated on the applicable Order. This Agreement governs Customers acquisition and/or use of the ordered Products, although certain terms apply only to one or more Products as described herein.
2. **Definitions.**
  - 2.1 "Affiliate" means, with respect to an entity, any other entity that, directly or indirectly, controls, is controlled by, or is under common control with such entity. For purposes of this definition, "control" means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.
  - 2.2 "Aggregated Statistics" means data and information related to use of the Products by Customer that is used by ARXG in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Products.
  - 2.3 "Authorized User(s)" means Customer and its employees, consultants, contractors, and agents who are authorized to access and use the Portal under the rights granted to Customer pursuant to this Agreement.
  - 2.4 "Documentation" means any user manuals, handbooks, and guides relating to the Products provided by ARXG either electronically or in hard copy form, including end user documentation relating to the Products available at [www.americanrxgroup.com](http://www.americanrxgroup.com).
  - 2.5 "Customer Data" means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer through the Products. With the exception of Aggregated Statistics, all output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any Customer Data are themselves also Customer Data.
  - 2.6 "Kiosk" means ARXG's metal receptacle that keeps the material secure preventing divergence.
  - 2.7 "Kiosk Management System" or "KMS" means ARXG's proprietary computer program, solely in object code, and associated infrastructure in a hosted environment provided and

maintained by ARXG for the provision of Products. KMS is designed for the Kiosk to help manage the Liner program. KMS indicates weight, current capacity, how often the door opens, if the Liner is full, it will auto lock the Kiosk (preventing overfill), it will send message alerts notifying of an issue or when the Liner needs to be replaced.

- 2.8 “Liners” mean ARXG’s cardboard container that receives the material within the Kiosk. When it is filled, the Liner is removed, sealed, and shipped to a third party for proper disposal (including the official documentation of that event with the completion of a certificate of destruction issued by such third party).
- 2.9 "Portal" means the hosted software-as-a-service provided by ARXG to Customer. The Portal manages all the metrics, logistics, and compliance associated with the Liner program.

### **3. Grant of License to KMS and the Portal.**

- 3.1 If ordered by Customer, and subject to Customer’s compliance with the terms of this Agreement, ARXG grants Customer a non-exclusive, non-transferable, non-sublicensable, license to:
- (a) load and execute the KMS in executable machine-readable form only, subject to the limitations on the number of sites specified in the Order; and
  - (b) access and use the Portal, subject to the limitations on the number of Authorized Users specified in the Order; and
  - (c) access and use any Documentation solely for the purpose of exercising Customer’s rights hereunder.
- 3.2 All rights not expressly granted to Customer in this Agreement are reserved by ARXG, and Customer may not use the KMS, Portal, and/or Documentation in any manner not expressly authorized by this Agreement. Customer may use the KMS, Portal and Documentation for its internal business operations only and not by, or for the benefit of, any affiliate, subsidiary, parent company or any other third party, nor may the KMS nor Portal be used for service bureau services. Customer may exercise its rights under this Agreement only in the states and territories of the United States.
- 3.3 Customer shall not: remove or destroy any proprietary rights marks or legends on or in the KMS, Portal, and/or Documentation and on authorized copies; modify, enhance, adapt, translate, or create derivative works of the KMS, Portal, and/or Documentation; transfer, distribute, assign, sublicense, rent, lease, export or sell the KMS, Portal, and/or Documentation; create an Internet "link" to the Portal or "frame" or "mirror" the Portal on any other server or Internet-based device; decompile, disassemble, or reverse engineer the KMS or Portal; or make copies of the KMS, Portal, and/or Documentation other than for archival and backup purposes.
- 3.4 Customer acknowledges and agrees that KMS is licensed to operate only on the operating environment set forth on the Documentation. Customer is solely responsible for the

acquisition, use, and maintenance of all components of the operating environment, and all associated costs and expenses.

- 3.5 Customer acknowledges and agrees that ARXG has the right to use its servers on which the Portal and/or Customer Data (defined below) are kept for any applications as ARXG, in its sole discretion, may elect, including, without limitation, ARXG's right to use the servers to provide concurrent services to third parties. The Portal is controlled and operated from facilities in the United States. ARXG makes no representations that the Portal is appropriate or available for use in other locations. Those who access or use the Portal from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including export and import regulations.
- 3.6 ARXG may make changes to the KMS and Portal, at its discretion, provided that it does not materially reduce the features or functions of the KMS and/or Portal compared to those existing on the Order. The terms for KMS and Portal in this Agreement apply to any updates, upgrades, new releases, and other bug fixes, patches, or changes, enhancements, or modifications to the KMS and/or that ARXG make generally commercially available.

#### **4. Delivery, Installation; Access; and Training for KMS and Portal.**

- 4.1 ARXG will ship the KMS, Documentation, and any other materials identified in the Order to Customer. Customer will be given one or more personal, non-transferable passwords to access the Portal. Customer is and will remain responsible for maintaining the confidentiality of that password(s), for all activities conducted on the Portal that make use of that password(s), including any use that Customer may subsequently contend was not unauthorized by Customer.
- 4.2 The KMS and Portal will be implemented pursuant to the terms of one or more Statements of Work ("SOWs") to the Order, in the time frames, and in exchange for the fees, set forth in the Order and the applicable SOWs. In addition, ARXG will provide training for the KMS and/or Portal, as described in the Order. Customer may acquire additional services from ARXG at ARXG's then-current professional services rates, or as otherwise agreed between the parties.
- 4.3 The KMS and/or Portal are deemed accepted fourteen (14) calendar days after implementation unless, within that time (the "Acceptance Period"), Customer provides written notice to ARXG that the KMS and/or Portal does not operate in substantial conformance with the warranties contained in this Agreement. If Customer provides such written notice to ARXG, ARXG will use commercially reasonable efforts to, at its sole option, repair or replace the KMS and/or Portal within a reasonable time of its receipt of the notice. However, if ARXG is unable to repair or replace the KMS and/or Portal within ninety (90) days of its receipt of the notice, then Customer may terminate this Agreement, return KMS, Documentation, and other materials to ARXG, and cease all use of the Portal, in which case Customer shall be relieved of all further payment obligations under this Agreement.

## **5. Support Services for KMS and Portal.**

- 5.1 Customer may obtain technical support services for the fees and pursuant to the terms in the Order and subject to ARXG's then-current technical support services policies and procedures.
- 5.2 Technical support services include: (a) when and if available, any updates, releases and enhancements to the KMS and/or Portal made generally available to all licensees for no charge; and (b) telephone and remote computer support as to the use and operation of the KMS and Portal, and error and defect verification, analysis and correction for the KMS and Portal to the extent possible by telephone and remote computer. ARXG will use commercially reasonable efforts to provide corrections to errors in the KMS and Portal in the form of patches, fixes, workarounds, or other form within a commercially reasonable time depending on the severity of the error as determined by ARXG.
- 5.3 Help-desk support does not include training, setup assistance, diagnosis of customer interface problems, or integration or programming services. Any such services are provided as stated in the Order.
- 5.4 Customer may also request on-site assistance from ARXG. In such event Customer shall pay ARXG its then current per-diem fees, and will reimburse ARXG for all reasonable traveling expenses, including meals, travel and lodging.
- 5.5 ARXG may be required to execute emergency maintenance in order to protect the security, performance, availability, or stability of the Portal. Emergency maintenance may include program patching and/or core system maintenance as required. ARXG works to minimize the use of emergency maintenance, and to the extent reasonable under the circumstances as determined by ARXG, will work to provide twenty-four (24) hours prior notice for any emergency maintenance requiring a service interruption.
- 5.6 To help ensure continuous stability, availability, security and performance of the Portal, ARXG reserves the right to perform major changes to its hardware infrastructure, operating software, applications software and supporting application software under its control, typically no more than twice per calendar year. Each such major change event is considered scheduled maintenance and may cause the Portal to be unavailable. Each such event is targeted to occur at the same time as the scheduled maintenance period. ARXG will work to provide no less than sixty (60) days prior notice of a major maintenance change event.

## **6. Kiosk and Liners.**

- 6.1 All sales of the Kiosk and/or Liners are F.O.B. ARXG's or its supplier's plant unless otherwise specified in the Order. Responsibility of ARXG shall cease upon delivery to and receipt of the Kiosk and/or Liners by a common carrier at which point Customer will bear all risk of loss for the Kiosk and/or Liners. Premium shipping expenses and/or other related expenses necessary to meet Customer's accelerated delivery schedules shall be the responsibility of Customer.

- 6.2 Delivery estimates are subject to the availability of Kiosks and/or Liners from ARXG's suppliers. Claims for shipment shortages must be made in writing and delivered within five (5) days of receipt of shipment. All other claims must be made in writing and delivered by Customer within thirty (30) days after Customer learns of facts upon which such claims are based. Any claim not made in writing within the time period shall be deemed waived.
- 6.3 Deliveries of orders placed by Customer may be changed, deferred or canceled only upon specific agreement in writing by ARXG and ARXG may condition such agreement upon Customer's assumption of liability and payment to ARXG for: (a) a sum equal to the costs of work in process including costs accrued for labor and material; (b) any amount for which ARXG is liable by reason of commitments made by ARXG to its suppliers; and (c) any other loss, cost or expense of ARXG as a result of such change, deferment or cancellation.
- 6.4 Only ARXG Liners are to be used as an insert within the Kiosk. Unless otherwise specified in the Order, no local code requirements are considered or included in the specifications for the Kiosk and/or Liners. Addition costs and terms will apply in the event that the Kiosk and/or Liners must be altered or prior approval obtained in order to comply with applicable state or local laws, codes, or ordinances that govern the local area where the proposed Kiosk and/or Liners will be located or services rendered.

## **7. Fees and Payments.**

- 7.1 Customer will pay all fees and expenses specified in the Order. Except as otherwise specified herein or in the Order: (a) fees are based on use of the Products purchased and not actual usage; (b) payment obligations are non-cancelable and fees paid are non-refundable; and (c) quantities purchased cannot be decreased during the relevant subscription term.
- 7.2 ARXG will invoice Customer in accordance with the Order. Unless otherwise stated in the Order, invoiced charges are due net thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to ARXG and notifying ARXG of any changes to such information.
- 7.3 If any amount owing by Customer under this Agreement is thirty (30) or more days overdue, ARXG may, without limiting ARXG's other rights and remedies: (a) charge Customer a late fee at the rate of 1.0% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; (b) accelerate Customer's unpaid fee obligations under this Agreements so that all such obligations become immediately due and payable; and/or (c) suspend the KMS and Portal until such amounts are paid in full. ARXG will give Customer at least ten (10) days' prior notice that Customer's account is overdue before suspending the KMS and Portal to Customer.
- 7.4 ARXG's fees do not include shipping or transportation, or any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively,

“Taxes”). Customer is responsible for paying all Taxes associated with Customer’s licenses and purchases hereunder. If ARXG has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, ARXG will invoice Customer and Customer will pay that amount, unless Customer provide ARXG with a valid tax exemption certificate authorized by the appropriate taxing authority. ARXG is solely responsible for taxes assessable against ARXG based on ARXG’s income, property and employees.

## **8. Customer Responsibilities.**

- 8.1 Customer shall bear all costs and expenses associated with Customer’s rights and obligations under this Agreement, including, but not limited to, all equipment, telephone lines, hardware, software, and other materials necessary for access to and use of the KMS and/or Portal. Customer is solely responsible for any and all activities that occur using Customer’s password(s) for the Portal, including inputting, maintaining, and managing accurate information and ensuring that Customer exits or logs-off from the Portal at the end of each session of use.
- 8.2 Customer shall notify ARXG immediately of any unauthorized use of Customer’s password(s) for the Portal, or any other breach of security that is known or suspected by Customer. ARXG shall not be responsible for any unauthorized access to, or alteration of, Customer’s transmissions, data, or Customer Data, or any material, information or data sent or received, regardless of whether the data is actually received by ARXG, or any transactions entered into through the Portal or failure to abide by this Agreement. ARXG shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data, or for any actions or omissions which ARXG takes in reliance upon Customer Data.
- 8.3 Customer agrees that Customer’s purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by ARXG regarding future functionality or features.
- 8.4 Customer warrants that it shall timely, completely and accurately perform all of its obligations and responsibilities under this Agreement, the Order, and all SOWs, including, without limitation, the timely rendering of all required decisions and approvals. Should Customer fail to comply with this warranty, ARXG shall receive an appropriate extension of time to provide the KMS and/or Portal under this Agreement, shall not be held responsible or liable for any resulting delay.

## **9. Customer Data.**

- 9.1 Customer represents and warrants that any and all documents, summaries, reports, analysis, studies, information, text, graphics, sound recordings, video recordings, or other materials (“Customer Data”) provided, disclosed, or delivered by Customer and/or its suppliers, customers and Authorized Users in connection with its use of the KMS and/or Portal are the property of Customer, or that Customer has the rights to disclose or deliver the Customer Data and other materials to ARXG, and that the Customer Data and other

materials do not infringe any copyright, trademark, trade secret, patent or other right of any third party.

- 9.2 ARXG shall be entitled to rely on the accuracy, truthfulness, completeness and appropriateness of all Customer Data. If Customer and/or its Authorized Users submit Customer Data in deviation from the agreed upon specifications or format, or which contain extraneous data, then ARXG will notify Customer of the deviation and Customer will either (a) remedy the deviation at its cost; or (b) direct ARXG to remedy the deviation, and Customer will pay to ARXG the applicable hourly rates for such services.
- 9.3 ARXG shall have the right, but not obligation, to refuse to incorporate into the Portal or to remove from the Portal, at any time, without prior notice to Customer, any Customer Data that, in ARXG's sole opinion, is defamatory, threatening, obscene, indecent, patently offensive, violative of the proprietary rights of a third party or otherwise tortious; provided, however, that such right will not relieve the Customer any of its indemnification obligations under this Agreement.

## **10. Ownership.**

- 10.1 Except for Customer Data, ARXG owns and shall retain all rights, title and interests, including all intellectual property rights, in and to the Products and Documentation, and other deliverables under this Agreement, including, all modifications, enhancements, updates, upgrades, improvements, adaptations, and/or derivative works of the foregoing, whether made by ARXG, Customer, and/or the parties jointly (collectively, "ARXG Materials"). No ARXG Materials shall be, or are to be considered, "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law or otherwise, Customer owns any intellectual property rights in such ARXG Materials, Customer hereby assigns to ARXG all rights, title and interest, including all intellectual property rights, in such works. Customer agrees to provide reasonable assistance to ARXG, at no additional cost, in connection with ARXG's registration, recordation, and/or enforcement, of its intellectual property rights in ARXG Materials.
- 10.2 Customer owns and shall retain all rights, title and interests, including all intellectual property rights, in and to: (a) all Customer Data provided by Customer and/or its Authorized Users to ARXG under this Agreement, and (b) all Customer Data generated by the KMS, Portal and associated services, exclusive of ARXG's ownership rights in and to the manner in which the KMS and/or Portal: (i) receives, stores, formats, displays, and organizes the Customer Data; and/or (ii) permits Customer to view, print, display, download, manipulate, analyze and reformat the Customer Data. Customer hereby grants ARXG a non-exclusive, non-transferable license to copy, display, store, aggregate, modify, and otherwise use Customer Data as necessary to perform its obligation under this Agreement.
- 10.3 Customer authorizes ARXG to generate, retain, store, and use Aggregated Statistics to improve its Products and/or services, for statistical and marketing purposes, and for maintenance, reporting, analysis, benchmarking, fraud prevention, and/or general market

research; provided that ARXG does not use such data in a manner, or publish any report, that could lead to the identification of Customer. Any products, algorithms, reports, or derivative works from Aggregated Statistics is the sole property of ARXG.

- 10.4 From time to time, Customer may choose to submit comments, information, questions, data, ideas, description of processes, or other information to ARXG, including any made in the course of receiving support services ("Feedback"). ARXG shall own and retain all rights, title and interests, including all intellectual property rights, in and to the Feedback, and may freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback will be considered Customer's Confidential Information, and nothing in this Agreement limits ARXG's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

## **11. Warranties and Disclaimers.**

- 11.1 ARXG warrants that for a period thirty (30) days after the Acceptance Date, the KMS will operate in substantial compliance with its applicable Documentation. If during this period the KMS does not perform as warranted, then ARXG will use commercially reasonable efforts to correct the nonconformance. If ARXG is unable to correct the nonconformance within a reasonable time, but in no event more than sixty (60) days, Customer may terminate this Agreement, return all KMS, Documentation, and other materials to ARXG, and receive a full refund of all licensee fees paid to ARXG for the KMS under this Agreement.
- 11.2 ARXG warrants that during the term of this Agreement, the Portal will operate in substantial compliance with its applicable Documentation. If the Portal fails to meet this warranty, ARXG shall, at no additional charge to Customer, use commercially reasonable efforts to correct such failure within a reasonable time. Customer acknowledges that the Portal may become inoperable for periods of time due to scheduled maintenance and due to causes beyond the reasonable control of ARXG, such as denial of service attacks, virus infestations, and power or communications outages. To the extent that the cause of inoperability is within the reasonable control of ARXG, the Portal will be restored promptly following the cessation of such cause(s).
- 11.3 This KMS and Portal warranties apply only to KMS and the Portal used in accordance with this Agreement, and does not apply if the KMS media, or KMS code has been subject to accident, misuse, or modification, and only if the nonconformance can be demonstrated on an unmodified version of the KMS and/or Portal. It shall not be deemed a breach of the KMS warranty if any failure of the KMS to operate in substantial compliance with its applicable Documentation is caused, in whole or in part, by an error, malfunction or other problem with the Environment and/or any one or more Third Party KMS products.
- 11.4 If ARXG investigates any nonconformance and such nonconformance is found to be caused by operator error, erroneous system configuration, modification, or other cause



not inherent in the KMS and/or Portal, as applicable, ARXG reserves the right to charge for its services at its then-current professional service rates.

- 11.5 ARXG warrants that for a period of one (1) year from the date of shipment, the Kiosk and/or Liners will remain free from defects in material and workmanship under normal use and proper maintenance. ARXG's obligation under the warranty shall be limited to the repair or replacement (at ARXG's option) of the Kiosk and/or Liners or parts manufactured by ARXG exclusive of the cost of field labor for removing or reinstalling such the Kiosk and/or Liners or parts. Failure to give written notice to ARXG of any alleged defect under this warranty within twenty (20) days of its discover, or attempts by parties other than ARXG or its authorized representatives to remedy the alleged defects, or failure to return product or parts for repair or replacement as herein provide, or failure to install and operate said products and parts according to instructions furnished by ARXG, or misuse, modification, abuse or alteration of such product, accident, fire, flood or other Act of God, or failure to pay entire contract price when due shall be a waiver by Purchaser of all rights under this warranty.
- 11.6 EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, THE PRODUCTS ARE PROVIDED "AS IS," AND ARXG AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. LICENSOR SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF ARXG.

## **12. Confidentiality.**

- 12.1 During this Agreement, each party may have access to information that is considered confidential by the other. This information may include, but is not limited to, the KMS, Portal, Documentation, Customer Data, technical know-how, technical specifications, software object code and source code, protocols, processes, strategic business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data ("Confidential Information").
- 12.2 Each party shall use the other party's Confidential Information only for the purposes of this Agreement. Each party shall maintain the confidentiality of the other party's Confidential Information in the same manner in which it protects its own Confidential Information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the other party's Confidential Information.
- 12.3 Each party is permitted to disclose the other party's Confidential Information to its employees, contractors and other third parties on a need to know basis only, provided that

such employees, contractors and/or third parties have contractual or legal confidentiality obligations to that party no less stringent than those contained in this Agreement. Each party shall be and remain fully liable and responsible for its employees', contractors' and/or other third parties' unauthorized disclosure or use of the other party's Confidential Information.

- 12.4 Each party is permitted to disclose the other party's Confidential Information as legally required in response to a court order, subpoena, administrative proceeding and/or similar legal process; provided that it, to the extent legally permitted, gives the other party reasonable notice of the request, and an opportunity to defend and/or attempt to limit or prevent the disclosure of its Confidential Information.
- 12.5 The confidentiality provisions of this Agreement do not apply to information that is or becomes generally available or known to the public through no act or omission of the receiving party; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or created by a party independently of its access to or use of the other party's Confidential Information.
- 12.6 Upon termination of this Agreement, each party shall return the other party's Confidential Information and shall not use the other party's Confidential Information for its own, or any third party's, benefit. The provisions of this Section shall survive termination of this Agreement for so long as the Confidential Information remains confidential.

### **13. Indemnification.**

- 13.1 ARXG shall defend, at its sole expense, any third party claim, demand or suit ("Claim") against Customer alleging that Customer's authorized use of any Product and/or Documentation infringes a third party's U.S. patent, copyright, trademark, trade secret or other intellectual property right, and shall indemnify and hold Customer harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) awarded or assessed against Customer in association with the Claim, or reached through a negotiated settlement of the Claim.
- 13.2 This indemnification extends only to the Products as delivered by ARXG and does not extend to: (a) any modifications, enhancements or other changes to the Products and/or Documentation created by or on behalf of Customer (unless created by ARXG); and/or (b) any Claim arising out of the combination of the Products with any other code, software, hardware or any other products, provided that such infringement would not have occurred but for such combination.
- 13.3 If any Products infringe a third party's U.S. patent, copyright, trademark, trade secret or other intellectual property right, or ARXG reasonably believes that it is likely to infringe, then ARXG shall, at its sole expense either (a) procure for Customer the right to continue using the Products; or (2) replace or modify the Products so that it is non-infringing, but maintains substantially the same functionality. If neither of these options is reasonably practical for ARXG, ARXG may terminate Customer's right to use the Products and Documentation.

- 13.4 Except for claims that are ARXG's obligation under Sections 13.1, Customer shall defend, at its sole expense, any Claim against ARXG arising out of Customer's (a) use of the Products and/or breach of this Agreement by Customer; (b) alleging that Customer Data infringes the intellectual property rights, contract rights or other rights of a third party; and/or (c) any assertion that Customer made false, misleading and/or otherwise deceptive statements with regard to ARXG and/or the specifications, features or capabilities of the Products; and shall indemnify and hold ARXG harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) awarded or assessed against ARXG in association with the Claim, or reached through a negotiated settlement of the Claim.
- 13.5 In order to receive indemnification under this Section, the party seeking indemnification must promptly notify the other party of the assertion of the Claim; allow the other party to retain sole and exclusive control over the defense and/or settlement of the Claim; and cooperate with the other party, at the other party's expense, in the defense and/or settlement of the Claim. This Section sets forth each party's sole indemnification obligations and indemnification remedies in association with the Claims described above.

#### **14. Term and Termination.**

- 14.1 This Agreement is effective on the date last signed by the parties (the "Effective Date") and continues for the period set forth in the applicable Order, unless earlier terminated in accordance with this Agreement. This Agreement shall automatically renew for successive one (1) year periods unless a party provides the other party with written notice of its intent not to renew, not less than ninety (90) days prior to the end of the then-current term.
- 14.2 Each party may terminate this Agreement if (a) the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after its receipt of written notice of such breach from the non-breaching party; or (b) the other party ceases to operate, declares bankruptcy, or becomes insolvent or is otherwise unable to meet its financial obligations.
- 14.3 Upon termination or non-renewal of this Agreement:
- (a) Customer shall, within thirty (30) day of the effective date of termination or non-renewal (i) promptly discontinue all use of the KMS, Portal, and Documentation, (ii) promptly de-install and/or remove any and all copies of the KMS, whether authorized or unauthorized, from any computer or server upon which the KMS has been installed by or on behalf of Customer; (iii) promptly return the all copies of the KMS, Documentation and all other materials to ARXG; and (iv) pay ARXG all amounts owed under this Agreement.
  - (b) ARXG shall, at its then-current hourly rates, purge all Customer Data from the Portal and provide Customer with an electronic copy of all of Customer Data residing on the Portal, in a format chosen by Customer;

- (c) each party shall return the other party's Confidential Information and other materials.
- 14.4 All provisions of this Agreement relating to confidentiality, ownership, indemnification, and limitations of liability shall survive termination or non-renewal of this Agreement.
- 15. Limitation of Liability.**
- 15.1 Except as provided below, in no event shall either party be liable to the other party in connection with this Agreement, regardless of the form of action or theory of recovery, for any: (a) indirect, incidental, consequential, special, punitive or exemplary damages, regardless of whether that party is aware of their possibility; (b) lost profits, lost revenue, loss of data, lost business expectancy or business interruption losses; and/or (c) direct damages in an amount in excess of the fees paid by Customer to ARXG for the affected Product(s) under this Agreement during the twelve (12) month period immediately preceding the event giving rise to the claim.
- 15.2 The limitations set forth in Section 15.1 do not apply to a party's: (a) indemnification obligations under this Agreement; (b) breach of its confidentiality obligations; (c) violation, misappropriation or infringement of the other party's intellectual property rights; and/or (d) gross negligence or willful misconduct.
- 15.3 Any claims relating to this Agreement shall be brought within one (1) year after the party asserting the claim knew, or reasonably should have known, of the existence of the claim.
- 16. General.**
- 16.1 This Agreement, all Orders, and all amendments thereto contain the entire understanding of the parties with respect to the subject matter addressed herein and supersede, replace and merge all prior understandings, promises, representations and agreements, whether written or oral, relating thereto. This Agreement may not be modified except by a writing signed by both parties. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. The remedies accorded ARXG under this Agreement are cumulative and in addition to those provided by law.
- 16.2 The relationship between ARXG and Customer is that of independent contractor. Nothing in this Agreement shall be construed as creating a relationship between ARXG and Customer of joint venturers, partners, employer-employee, or agent. Neither party has the authority to create any obligations for the other, or to bind the other to any statement, representation or document.
- 16.3 ARXG shall be permitted to use subcontractors to perform its obligations under this Agreement, provided that no use of any subcontractors shall relieve ARXG of its obligations under this Agreement, and ARXG shall remain liable for each subcontractor's compliance with, or breach of, this Agreement.

- 16.4 Any waiver of a party's right or remedy related to this Agreement must be in writing, signed by that party to be effective. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will effect the other provisions of this Agreement.
- 16.5 All notices, requests, consents, claims, demands, waivers and other communication under this Agreement will have legal effect only if in writing and addressed to a party as set forth in the Order (or to such other address or such other person that such addressee party may designate from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; and (c) on the seventh (7th) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.
- 16.6 Neither party shall be responsible or liable for any delay or failure in performing its obligations under this Agreement if such delay or failure is the direct result of causes outside of that party's reasonable control, including, without limitation, power outages, accidents, strikes, fires, war or acts of God, civil commotion, inability to obtain materials, third party communication system errors or downtime, delay or errors in the United States mail or change of laws or regulations; provided that such party uses best efforts to resume performance of its obligations as soon as practically possible.
- 16.7 This Agreement shall be governed by the laws of the State of Delaware (exclusive of its choice of law rules), and the federal laws of the U.S. The parties agree that any litigation arising between the parties in relation to this Agreement shall be initiated and maintained in the courts of the United States District Court of Wilmington, Delaware for the District of Delaware, and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts.
- 16.8 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the fullest extent that it is valid and enforceable under applicable law. All other provisions of this Agreement shall remain in full force and effect.
- 16.9 Customer may not assign this Agreement, in whole or in part, without ARXG's prior express written consent, which shall not be unreasonably withheld or delayed. Any attempted assignment without such written consent shall be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.