

Terms of Service

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING “ACCEPTED AND AGREED TO,” CUSTOMER AGREES TO THESE TERMS AND CONDITIONS.

These Terms of Service constitute an agreement (this “Agreement”) by and between Xakia Technologies Inc., a Delaware corporation whose principal place of business is 4700 Belleview, Ste 404, Kansas City MO 64112, USA (“Vendor”) and the corporation, limited liability company, or other business entity executing this Agreement (“Customer”). This Agreement is effective as of the date Customer clicks “Accepted and Agreed To” (the “Effective Date”). Customer’s use of and Vendor’s provision of Vendor’s System (as defined below in Section 1.11) are governed by this Agreement.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS. CUSTOMER IS DEEMED TO HAVE AGREED TO THESE TERMS ON BEHALF OF ANY ENTITY FOR WHOM CUSTOMER USES THE SYSTEM.

1. DEFINITIONS.

The following capitalized terms will have the following meanings whenever used in this Agreement.

1.1. “Agreement” means these Terms of Service and the terms of Vendor’s Privacy Policy applicable to the Customer Data Location(s) selected by Customer.

1.2. “AUP” means Vendor’s acceptable use policy, as amended from time to time, currently posted at <http://www.xakiatech.com/acceptable-use-policy>.

1.3. “Customer Data” means data in electronic form input, documents uploaded by Customer, or data collected through the System by or from Customer, including without limitation by Customer’s Users. For the avoidance

of doubt, “Customer Data” does not include personal information that Customer provides to Vendor outside the System (e.g. e-mails between the parties); such personal information is governed by the applicable Privacy Policy.

1.4. “Customer Data Location” means a jurisdiction that has been selected by Customer for the purpose of the System, in which Vendor receives and stores Customer Data.

1.5. “Documentation” means any documentation for and in relation to the System provided to Customer by Vendor.

1.6. “Order” means Vendor’s selected subscription type for access to the System, entered into via the Platform.

1.7. “Platform” means that part of the Website to which Customer is given the right to log in so as to use the System, which may include www.app.xakiatech.com.

1.8. “Privacy Policy” means Vendor’s privacy policy, as amended from time to time, applicable to each Customer Data Location selected by Customer in the Platform which are available at:

- (a) For Australia: <https://www.xakiatech.com/privacy-policy>;
- (b) For the USA: <https://www.xakiatech.com/usa-privacy>;
- (c) For Europe: <https://www.xakiatech.com/privacy-policy>; and
- (d) For Canada: <https://www.xakiatech.com/canada-privacy>.

1.9. “Subscription Fee” means the access fees (excluding any taxes and duties) payable by Customer for access to the System by its Users in accordance with the fee schedule set out on the Website (which Vendor may change from time to time by notice to Customer). If Customer has selected more than one Customer Data Location for an Authorized User, the Vendor may elect which of those Customer Data Locations will be used to determine the fee payable for that Authorized User.

1.10. “Subscription Period” means the period of either one month or 12 months as elected by Customer by notice to Vendor. If Customer does not make an election, it will be one month.

1.11. “System” means the online matter management services made available by Vendor to Customer (as may be changed or updated from time to time by Vendor) via the Platform.

1.12. “Term” is defined in Section 11.2 below.

1.13. “User” means any individual who uses the System on Customer’s behalf or through Customer’s account or passwords, whether authorized or not. For the purposes of clauses 5, 7, 8.3, 8.4 and 10, a reference to a Customer includes that Customer’s Users.

1.14. “Website” means the Internet site(s) operated by Vendor from time to time, which may include www.xakiatech.com, or any other website operated by Vendor as advised to Customer.

2. THE SYSTEM.

2.1. Use of the System. During the Term, Customer may access and use the System via the Platform pursuant to: (a) the terms of its Order, including such features and functions as the Order requires; and (b) Vendor’s policies posted on its Website or otherwise provided to Customer, as such policies may be updated from time to time. Customer’s access to and use of the System is limited to Authorized Users (as defined in Section 5.7), is non-exclusive, non-transferable, and limited by and subject to this Agreement.

2.2. Availability. Although Vendor intends that the System should be available 24 hours a day, seven days a week, it is possible that on occasion the System or Platform may be unavailable to permit maintenance or other development activity to take place. If for any reason Vendor must interrupt the System for longer periods than Vendor would normally expect, Vendor will use reasonable commercial efforts to publish in advance details of such activity on the Website.

2.3. Documentation. Customer may reproduce and use the Documentation solely as necessary to support Users’ use of the System.

2.4. System Revisions. Vendor may update or change the System, or revise System features and functions, at any time, including without limitation by removing such features and functions. If any such revision to the System materially reduces features or functionality as required by an Order, Customer may within 30 days of notice of the revision cancel its subscription to the System and terminate this Agreement.

3. SYSTEM FEES & PAYMENT.

3.1. Payment Obligations. Customer will pay Vendor the Subscription Fee for each Subscription Period. Vendor will not be required to refund the Subscription Fee under any circumstances. The Subscription Fee for the Subscription Period is payable to Vendor or an affiliate nominated in writing by Vendor in advance starting one month following the date Customer registered to use the System. If Customer elects to pay the Subscription Fee by credit card, the Subscription Fee will be charged to the credit card details provided when Customer registered to use the System. Customer's credit card will be charged on the due date and an invoice will be sent through the System to Customer. If Customer does not elect to pay the Subscription Fee by credit card, Vendor will invoice Customer for each Subscription Period. Invoices are payable fourteen (14) days from the date of each invoice. Customer is responsible for payment of all taxes and duties in addition to the Subscription Fee. Any invoice not paid within fourteen (14) days of billing is subject to a 1.5% monthly interest charge.

4. CUSTOMER DATA & PRIVACY.

4.1. Use of Customer Data. Unless it receives Customer's prior written consent, Vendor: (a) will not disclose Customer Data to any other third party (other than Vendor's affiliates); (b) will not access, process, or otherwise use Customer Data other than as necessary to facilitate the System; and (c) will not intentionally grant any third party access to Customer Data, including without limitation Vendor's other customers, except subcontractors that are subject to reasonable nondisclosure obligations. Notwithstanding the foregoing, Vendor may disclose Customer Data as required by Applicable Laws (as defined below) or by proper legal or governmental authority. Where permitted by law, Vendor will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

4.2. Third Party Applications. If Vendor and Customer mutually agree to enable third-party applications for use in conjunction with the System, Customer acknowledges that Vendor may allow the providers of those third-party applications to access Customer Data as required for the interoperation of such third-party applications with the System. Vendor shall not be

responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by third-party application providers.

4.3. Privacy Policy. The Privacy Policy applies only to the System and does not apply to any third party website or service linked to the System or recommended or referred to through the System or by Vendor's staff. Customer agrees that the privacy policies of such third party websites or services will govern such websites or services.

4.4. Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, Customer assumes such risks. Vendor adheres to best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not offer any representation, warranty, or guarantee that Customer Data will not be lost, exposed or disclosed. Customer may export its matters list through the Platform and Vendor recommends that Customer regularly does so. If Vendor directly causes or contributes to any loss, corruption or destruction in the accessibility or usability of Customer Data, Vendor will at its own cost and expense, use its reasonable endeavours to restore that Customer Data from the available back-up. This is the entire obligation and remedy for loss, corruption or destruction of Customer Data.

4.5. Data Accuracy. Vendor will have no responsibility or liability for the accuracy of data uploaded to the System by Customer, including without limitation Customer Data and any other data uploaded by Users.

4.6. Data Deletion. Vendor may permanently erase Customer Data if Customer's account is delinquent, suspended, or terminated for 30 days or more.

4.7. Excluded Data. Customer represents, warrants and covenants that Customer Data does not and will not include, and Customer has not and will not upload or transmit to Vendor's computers or other media, any data ("Excluded Data") regulated pursuant to any law, rule, order or regulation of any governmental entity having jurisdiction over such data (the "Excluded Data Laws"). CUSTOMER RECOGNIZES AND AGREES THAT: (a) VENDOR HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) VENDOR'S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY

NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.

4.8. Aggregate & Anonymized Data. Notwithstanding the provisions above of this Section 4, Vendor may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. (“Aggregate Data” refers to anonymized and aggregated Customer Data with all personal information removed.)

4.9. Location of Customer Data. Customer agrees that Customer Data that is entered by an Authorized User will be transferred to servers of Vendor’s data hosting provider in the Customer Data Location selected by Customer for that Authorized User. Vendor’s data hosting provider’s role is limited to providing a hosting and storage service to Vendor, and Vendor has taken steps to ensure that its data hosting provider does not have access to, and uses the necessary level of protection for, Customer Data. Vendor’s data hosting provider does not control, and is not permitted to access or use, Customer Data except for the limited purpose of storing the information. Vendor does not currently “disclose” personal information in Customer Data to third parties located outside Customer Data Locations selected by Customer but may disclose personal information to its affiliates (including related corporate entities in Australia).

4.10. Customer acknowledges in all cases that Vendor acts as the data processor of Customer Data and Customer is the data controller of Customer Data under applicable data protection regulations in the European Union and European Economic Area.

4.11. Customer must obtain and maintain any required consents necessary to permit the processing of Customer Data under this Agreement.

4.12. To the extent Vendor processes any personal information as part of Customer Data that is subject to the General Data Protection Regulation, the terms of Vendor’s Data Processing Addendum (as amended from time to time) are incorporated into this Agreement. Vendor’s Data Processing Addendum can be found here: <https://www.xakiatech.com/DPA>

4.13. Security. Vendor is committed to protecting the security of Customer Data and takes all reasonable precautions to protect it from unauthorized access, modification or disclosure. Customer Data is stored on secure servers that have SSL Certificates issued by leading certificate authorities, and all Customer Data entered into the Platform by Customer is encrypted. However, the Internet is not in itself a secure environment and Vendor cannot give an

absolute assurance that Customer information will be secure at all times. Transmission of Customer Data over the Internet (including as a result of notifications by email set up by the Customer in the Platform) is at Customer's own risk and Customer should only enter, or instruct the entering of, Customer Data to the System within a secure environment. Vendor will advise Customer at the first reasonable opportunity upon discovering or being advised of a security breach where Customer Data is lost, stolen, accessed, used, disclosed, copied, modified, or disposed of by any unauthorized persons or in any unauthorized manner.

5. CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.

5.1. General. Customer must only use the System and Platform for Customer's own lawful internal business purposes, in accordance with this Agreement and any notice sent by Vendor or condition posted on the Website. Customer may use the System and Platform on behalf of others or in order to provide services to others but if Customer does so it must ensure that Customer is authorized to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to Customer.

5.2. Acceptable Use. Customer will comply with the AUP. Customer will not: (a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System; (b) provide System passwords or other log-in information to any third party; (c) share non-public System features or content with any third party; or (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. In the event that it suspects any breach of the requirements of this Section 5, including without limitation by Users, Vendor may suspend Customer's access to the System without advanced notice, in addition to such other remedies as Vendor may have. Neither this Agreement nor the AUP requires that Vendor take any action against Customer or any User or other third party for violating the AUP, this Section 5, or this Agreement, but Vendor is free to take any such action it sees fit.

5.3. Unauthorized Access. Customer will take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting

its passwords and other log-in information. Customer will notify Vendor immediately of any known or suspected unauthorized use of the System or breach of its security and will use best efforts to stop said breach, and take all other actions that Vendor reasonably deems necessary to maintain or enhance the security of Vendor's computing systems and networks and Customer's access to the System.

5.4. Usage Limitations. Use of the System may be subject to limitations such as number of users, amount of Customer Data that may be stored, availability of the Platform or availability of the services provided to Vendor by third party providers which are necessary inputs to the System. Any such limitations will be advised as they become known to Vendor.

5.5. Compliance with Laws. In its use of the System, Customer will comply with all applicable laws, regulations, statutes, rules, orders and other requirements of any international, federal, state/provincial or local governmental authority ("Applicable Laws"), including without limitation Applicable Laws governing the collection, use, disclosure and protection of personally identifiable information and Customer Data.

5.6. Users & System Access. Customer is responsible and liable for: (a) Users' use of the System, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the System through Customer's account, whether authorized or unauthorized.

5.7. Authorized Users. Customer acknowledges and agrees that, subject to any applicable written agreement between Customer and the Users, or any other Applicable Laws:

- (a) Customer determines who is an authorized User (an "Authorized User") and what level of user role access to the System that Authorized User has;
- (b) Customer selects jurisdiction(s) at which an Authorized User may access the System;
- (c) Customer is responsible for all Authorized Users' use of the System;
- (d) Customer controls each Authorized User's level of access to the System at all times and can revoke or change an Authorized User's access, or level of access, at any time and for any reason, in which case that person

or entity will cease to be an Authorized User or shall have that different level of access, as the case may be; and

- (e) if there is any dispute between Customer and an Authorized User regarding access to the System, Customer shall decide what access or level of access to the relevant data or System that Authorized User shall have, if any.

5.8. Technical Problems. If Customer experiences technical problems with the System, Customer agrees to make all reasonable efforts to investigate and diagnose problems before contacting Vendor. If Customer still needs technical help, please check the support provided online by Vendor on the Website or failing that email support@xakiatech.com.

6. IP & FEEDBACK.

6.1. IP Rights to the System. Vendor retains all right, title, and interest in and to the System, Platform, Website and Documentation, including without limitation all software used to provide the System and all graphics, user interfaces, logos, and trademarks reproduced through the System. This Agreement does not grant Customer any intellectual property license or rights in or to the System, Platform, Website, Documentation or any of their components. Customer recognizes that the System, Platform, Website, Documentation and their components are protected by copyright and other laws.

6.2. IP Rights to Customer Data. Customer retains all right, title, and interest in and to the Customer Data. However, Customer's access to the Customer Data through the System is contingent on full payment of the Subscription Fees when due. Customer grants Vendor a license to use, copy, transmit, store, and back-up Customer's information and Customer Data for the purposes of enabling Customer to access and use the System and for provision of services to Customer.

6.3. Feedback. Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer or Users provide to Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the User in question. Notwithstanding the provisions of Section 7 below, Feedback will not be considered

Confidential Information (as defined below), provided information Customer transmits with Feedback or related to Feedback may be considered Confidential Information. (“Feedback” refers to any suggestion or idea for improving or otherwise modifying any of Vendor’s products or services.)

7. CONFIDENTIAL INFORMATION.

“Confidential Information” refers to the following items Vendor discloses to Customer: (a) any document Vendor marks “Confidential”; (b) any information Vendor orally designates as “Confidential” at the time of disclosure, provided Vendor confirms such designation in writing within five (5) business days; (c) the Documentation whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information Customer should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Customer’s possession at the time of disclosure; (ii) is independently developed by Customer without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Customer’s improper action or inaction; or (iv) is approved for release in writing by Customer. Customer is on notice that the Confidential Information may include Vendor’s valuable trade secrets.

7.1. Nondisclosure. Customer will not use Confidential Information for any purpose other than legal matter management (the “Purpose”). Customer: (a) will not disclose Confidential Information to any employee or contractor of Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Customer with terms no less restrictive than those of this Section 7; and (b) will not disclose Confidential Information to any other third party without Vendor’s prior written consent. Without limiting the generality of the foregoing, Customer will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Customer will promptly notify Vendor of any misuse or misappropriation of Confidential Information that comes to Customer’s attention. Notwithstanding the foregoing, Customer may disclose Confidential Information as required by Applicable Law or by proper legal or governmental authority. Customer will give Vendor prompt notice of any such legal or governmental demand and reasonably cooperate with Vendor in any effort to seek a protective order or otherwise to contest such required disclosure, at Vendor’s expense.

7.2. Injunction. Customer agrees that breach of this Section 7 would cause Vendor irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Vendor will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

7.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 7.1 above (Nondisclosure) will terminate two (2) years after the date of disclosure; provided that such obligations related to Confidential Information constituting Vendor's trade secrets will continue so long as such information remains subject to trade secret protection pursuant to Applicable Law. Upon termination of this Agreement, Customer will return all copies of Confidential Information to Vendor or certify, in writing, the destruction thereof.

7.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Vendor will retain all right, title, and interest in and to all Confidential Information.

7.5. Exception & Immunity. Pursuant to the United States' Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Customer is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

- (a) Immunity. An individual shall not be held criminally or civilly liable under any U.S. Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and
- (b) Use of Trade Secret Information in Anti-Retaliation Lawsuit. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

8. REPRESENTATIONS, WARRANTIES & COVENANTS.

8.1. From Vendor. Vendor represents, warrants and covenants that it is the owner of the System and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. Vendor's representations, warranties and covenants in the preceding sentence do not apply to use of the System in combination with hardware or software not provided by Vendor. In the event of a breach of the representation, warranty or covenant in this Section 8.1, Vendor, at its own expense, will promptly take the following actions: (a) secure for Customer the right to continue using the System; (b) replace or modify the System to make it non-infringing; or (c) terminate the infringing features of the System and refund to Customer any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Customer's right to terminate for breach where applicable, the preceding sentence states Vendor's sole obligation and liability, and Customer's sole remedy, for breach of the representations, warranties and covenants in this Section 8.1 and for potential or actual intellectual property infringement by the System.

8.2. From Customer. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the System; (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to Applicable Law; (d) Customer is authorized to use and access the information and Customer Data that it inputs to the System, and the processed information and Customer Data that is made available to Customer through its use of the System; and (e) Customer has satisfied itself that the System meets its business needs and is suitable for the purposes for which the System is used.

8.3. Warranty Disclaimers. Except to the extent set forth in Section 8.1 above, CUSTOMER ACCEPTS THE SYSTEM "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY OR CONDITION ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

8.4. Acknowledgement. Vendor has no responsibility to any person other than Customer and nothing in this Agreement confers, or purports to confer, a benefit on any person other than Customer. If Customer uses the System or accesses the Platform on behalf of or for the benefit of anyone other than Customer (whether a body corporate or otherwise), Customer agrees that: (a) Customer is responsible for ensuring that it has the right to do so; (b) Customer is responsible for authorizing any person who is given access to information or Customer Data, and Customer agrees that Vendor has no obligation to provide any person access to such information or Customer Data without Customer's authorization and may refer any requests for information to Customer to address.

9. INDEMNIFICATION.

Customer will defend, indemnify, and hold harmless Vendor and the Vendor Associates (as defined below) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the System or the Platform, including without limitation: (a) claims by Users or by Customer's employees, as well as by Customer's own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the System through Customer's account, including without limitation by Customer Data; (d) claims that use of the System through Customer's account harasses, defames, or defrauds a third party or violates Canada's antispyam legislation (CASL) or the CAN-SPAM Act of 2003, or any

other law or restriction on electronic advertising; and (e) Vendor's refusal to provide any person access to Customer's information or Customer Data in accordance with this Agreement, or Vendor making available information or Customer Data to any person with Customer's authorization. Indemnified Claims include, without limitation, claims arising out of or related to Vendor's negligence. Customer's obligations set forth in this Section 9 include retention and payment of attorneys and payment of court costs, as well as settlement at Customer's expense and payment of judgments. Vendor will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (The "Vendor Associates" are Vendor's affiliates, shareholders, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives, successors and assigns).

10. LIMITATION OF LIABILITY.

10.1. Dissatisfaction. If Customer is not satisfied with the System, Customer's sole and exclusive remedy is to terminate this Agreement in accordance with Section 11.

10.2. Dollar Cap. VENDOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO VENDOR IN THE PREVIOUS 12 MONTHS.

10.3. Exclusion of Consequential etc. Damages. IN NO EVENT WILL VENDOR BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

10.4. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS SECTION 10 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If Applicable Law limits the application of the provisions of this Section 10, Vendor's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Vendor's liability limits and other rights set forth in this Section 10 apply likewise to Vendor Associates.

11. TRIAL PERIOD AND SUBSCRIPTION PERIOD; TERM & TERMINATION.

11.1. Trial Period and Subscription Period. Customer may evaluate the System without obligation to continue to use the System for a period of one month from the Effective Date (the “Trial Period”). If Customer chooses to continue using the System after the Trial Period, Customer will be charged the Subscription Fee from the day that is one month following the date on which Customer first registered for use of the System. Vendor will continue to bill Customer in advance for use of the System in subsequent Subscription Period(s), until such time as Customer chooses to discontinue using the System by cancelling its subscription in the ‘Admin’ section of the System.

11.2. Term; Termination for Convenience. The term of this Agreement (the “Term”) will commence on the Effective Date and continue for the Trial Period and the Subscription Period(s), as applicable. At the end of each Subscription Period this Agreement will automatically continue for another Subscription Period, provided Customer pays the Subscription Fees for that Subscription Period and unless a party terminates this Agreement by giving at least 30 days’ notice at any time. If either party terminates this Agreement pursuant to the previous sentence, Customer shall remain liable to pay all Subscription Fees for the Subscription Period during which the Agreement is terminated.

11.3. Termination for Cause. Either party may terminate this Agreement for the other’s breach by written notice. Such notice will specify in detail the nature of the breach and will be effective in 14 days, or more if specified in the notice, unless the other party first cures the breach. Vendor may additionally terminate this Agreement immediately by written notice if: (a) Customer or Customer’s business becomes bankrupt or insolvent, goes into liquidation, makes any arrangement with its creditors, or becomes subject to any similar bankruptcy, insolvency, liquidation or winding-up event in any jurisdiction; (b) Customer breaches Sections 5.1 or 5.2; or (c) any payment of Subscription Fees that is more than 30 days overdue.

11.4. Suspension. Without limiting any rights under Section 11.3, if any of the circumstances set out in Section 11.3 occur in relation to Customer, Vendor may at its sole discretion: (a) suspend for any definite or indefinite period of time, Customer’s use of the System and the Platform; (b) suspend or terminate access to all or any Customer Data; and (c) take any of the actions in Section 11.3 and sub-paragraphs (a) and (b) of this Section 11.4 in respect

of any or all other persons whom Customer has authorized to have access to Customer information or Customer Data.

11.5. Effects of Termination. Upon termination of this Agreement, Customer will cease all use of the System and Platform and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Sections 6 (IP & Feedback), 7 (Confidential Information), 8.3 (Warranty Disclaimers), 9 (Indemnification), 10 (Limitation of Liability), 11.5 (Effects of Termination), 12 (Miscellaneous); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

12. MISCELLANEOUS.

12.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

12.2. Notices. Customer agrees to receive notices from Vendor pursuant to this Agreement and otherwise in connection with Customer's use of the System to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement legal@xakiatech.com, and such notices will be deemed received 72 hours after they are sent and a non-delivery notification has not been received by Customer.

12.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

12.4. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Vendor's express written consent. Except to the extent forbidden in this Section 12.4, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

12.5. Severability. To the extent permitted by Applicable Law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by Applicable Law, and the remaining provisions of this Agreement will continue in full force and effect.

12.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

12.7. Choice of Law & Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. Subject to Section 12.8(c), the parties consent to the personal and exclusive jurisdiction of the federal and state courts of Delaware. This Section 12.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

12.8. Dispute Resolution.

- (a) If any dispute arises under or in connection with this Agreement ("Dispute"), a party must not commence legal proceedings in respect of that Dispute until the parties have first sought to resolve the Dispute in accordance with this clause.
- (b) Either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the Dispute in good faith.
- (c) If the Dispute is not resolved within 15 business days of such notice, it will be referred to mediation in accordance with the International Chamber of Commerce Mediation Rules except as they may be modified herein or by mutual agreement of the parties, with each party bearing their own cost.
- (d) This clause does not prevent a party from bringing proceedings in court to seek urgent interlocutory relief necessary to protect that party's rights.

12.9. Conflicts. In the event of any conflict between this Agreement and any Vendor policy posted online, including without limitation the AUP or Privacy Policy, the terms of this Agreement will govern.

12.10. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

12.11. Technology Export. Customer will not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by Vendor or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer will not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).

12.12. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

12.13. Amendment. Vendor may amend this Agreement from time to time by posting an amended version at its Website and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective thirty (30) days after such notice (the "Proposed Amendment Date") unless Customer first gives Vendor written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next Subscription Period following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Section 11, Term & Termination). Customer's continued use of the System following the effective date of an amendment will confirm Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 12.13, Vendor may revise the Privacy Policy and AUP at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.

12.14. No Legal Advice. Customer agrees that use of the System does not constitute the receipt of legal advice from Vendor. If Customer has any legal questions, please contact a lawyer.