

Xakia Terms of Use

Welcome to Xakia, an online matter management service designed especially for in house professional services teams. These Terms of Use are intended to explain our obligations as a service provider and Your obligations as a customer. Please read them carefully.

These Terms of Use are binding on any use of the Service and apply to You from the time that Xakia provides You with access to the Service.

Xakia reserves the right to change these terms at any time, effective 7 days after we communicate these changes to You via email or notification via the Website. If You do not wish to accept any updated Terms of Use that we publish, You may terminate this Agreement by written notice sent to us prior to the changes taking effect. Your continued use of the Service will be taken as acceptance of any updated versions of these Terms of Use of which we notify You.

By registering to use the Service You acknowledge that You have read and understood these Terms of Use and have the authority to act on behalf of any person for whom You are using the Service. You are deemed to have agreed to these Terms of Use on behalf of any entity for whom You use the Service.

1. DEFINITIONS

"Agreement" means these Terms of Use and the terms of our Privacy Policy.

"Access Fee" means the monthly fee (excluding any taxes and duties) payable by You in accordance with the fee schedule set out on the Website (which Xakia may change from time to time on notice to You).

"Confidential Information" includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data" means any data inputted by You or with Your authority into the Website and includes any Personal Information inputted by You or with Your authority into the Website. Data does not include Personal Information that You provide to us by other means (for example emails between us). All such personal information is governed by Xakia's Privacy Policy.

"Intellectual Property Right" means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

"Invited User" means any person or entity, other than the Subscriber, that uses the Service with the authorisation of the Subscriber from time to time.

“Personal Information” has the meaning given to that term under the Privacy Act, and includes any similar theory of personally identifiable information or data under applicable Privacy Laws.

“Privacy Act” means the *Privacy Act 1988* (Cth), and any associated rules or regulations.

“Privacy Laws” means all applicable laws, regulations, statutes, rules, orders and other requirements of any international, federal, state or local governmental authority which governing the collection, use and disclosure of Personal Information.

“Privacy Policy” means Xakia’s privacy policy, which is available at <https://www.xakiatech.com/privacy-policy> (as amended from time to time).

“Reserve Bank of Australia’s Cash Rate” means the overnight money market interest rate published by the Reserve Bank of Australia on its website.

"Service" means the online matter management services made available (as may be changed or updated from time to time by Xakia) via the Website.

"Website" means the Internet site at the domain www.xakia.com.au or any other site operated by Xakia including but not limited to www.matters.xakia.com.au and www.xakiatech.com.

"Xakia" means Xakia Technologies Pty Limited ACN 612 857 593.

"Subscriber" means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

"You" means the Subscriber, and where the context permits, an Invited User. "Your" has a corresponding meaning.

2. USE OF SOFTWARE

Xakia grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and the Invited Users, or any other applicable laws:

- a) the Subscriber determines who is an Invited User and what level of user role access to the relevant organisation and Service that Invited User has;
- b) the Subscriber is responsible for all Invited Users’ use of the Service;
- c) the Subscriber controls each Invited User’s level of access to the relevant organisation and Service at all times and can revoke or change an Invited 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 Invited User or shall have that different level of access, as the case may be; and
- d) if there is any dispute between a Subscriber and an Invited User regarding access to any organisation or Service, the Subscriber shall decide what access or level of access to the relevant Data or Service that Invited User shall have, if any.

3. YOUR OBLIGATIONS

a) Payment obligations

The Access Fee is payable monthly in advance starting one month following the date You added Your first organisation to Your Xakia account. If You elect to pay by credit card, the Access Fee will be charged to the credit card details of which You provided when You registered to use the Service. Your credit card will be charged on the due date and an invoice will be sent through the Service to You or to a Billing Contact whose details are provided by You. If You do not elect to pay by credit card, we will invoice You monthly. Invoices are payable 14 days from the date of each invoice delivered to You or a Billing Contact whose details are provided by You.

You are responsible for payment of all taxes and duties in addition to the Access Fee. If Xakia makes a supply under or in connection with this Agreement in respect of which GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* is payable, the GST exclusive consideration for the supply is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

You must pay a late charge for any failure to make any payment by the date required, calculated daily using a rate that is 2% over the Reserve Bank of Australia's Cash Rate on that day, from the date that the payment first becomes overdue, to the date that the payment is received by Xakia.

b) Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for the Access Fees as a result of the number of organisations that You have added to the Service or that have been added with Your authority or as a result of Your use of the Service ('Organisations'). Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Access Fees in relation to all of Your Organisations. Without prejudice to any other rights that Xakia may have under these Terms or at law, Xakia reserves the right to render invoices for the full (non-discounted) Access Fees due or suspend or terminate Your use of the Service in respect of any or all of Your Organisations in the event that any invoices for those Access Fees are not paid in full by the due date for payment.

c) General obligations:

You must only use the Service and Website for Your own lawful internal business purposes, in accordance with these Terms and any notice sent by Xakia or condition posted on the Website. You may use the Service and Website on behalf of others or in order to provide services to others but if You do so You must ensure that You are authorised 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 You.

d) Access conditions:

- i. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Xakia of any unauthorised use of Your passwords or any other breach of security and Xakia will reset Your password and You must take all other actions that Xakia reasonably deems necessary to maintain or enhance the security of Xakia's computing systems and networks and Your access to the Services.
- ii. As a condition of these Terms, when accessing and using the Services, You must:
 - o not attempt to undermine the security or integrity of Xakia's computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
 - o not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;
 - o not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
 - o not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
 - o not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

e) Usage Limitations:

Use of the Service may be subject to limitations such as number of users, amount of Data that may be stored, availability of the Website or availability of the services provided to Xakia by its third party providers which are necessary inputs to the Services. Any such limitations will be advised as they become known to Xakia.

f) Indemnity:

To the extent permitted by law, You indemnify Xakia against: all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to Xakia, including (but not limited to) any costs relating to the recovery of any Access Fees that are due but have not been paid by You.

4. CONFIDENTIALITY AND PRIVACY

a) Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- i. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with this Agreement. Neither party will, without the

prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by this Agreement.

- i. Each party's obligations under this clause will survive termination of this Agreement.
- ii. The provisions of clauses 4a)i and 4a)ii shall not apply to any information which:
 - o is or becomes public knowledge other than by a breach of this clause;
 - o is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - o is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - o is independently developed without access to the Confidential Information.

b) Privacy:

Where You disclose any Personal Information to Xakia which is for the purposes of, or related to, this Agreement (including when You access or use the Service, or authorise another person to do so), You must comply with all applicable Privacy Laws, including the Privacy Act.

Xakia will comply with all applicable Privacy Laws (including the Privacy Act) and its Privacy Policy when collecting, handling, using or disclosing any Personal Information that we acquire about You (or any other person) in connection with Your use of the Service or access to the Website.

Xakia's Privacy Policy explains how it may use and disclose such Personal Information. In particular, Xakia will use Your Personal Information for the purposes of providing You with access to and use of the Service, ongoing product and service maintenance and development, and the other purposes set out in the Privacy Policy.

By using the Service, You also agree that Xakia can access, aggregate and use non-personally identifiable data Xakia has collected from You. This data will in no way identify You or any other individual.

Xakia may use this aggregated non-personally identifiable data to:

- i. assist it to better understand how its customers are using the Service,
- ii. provide its customers with further information regarding the uses and benefits of the Service,
- iii. enhance small business productivity, including by creating useful business insights from that aggregated data and allowing You to benchmark Your business' performance against that aggregated data, and
- iv. otherwise to improve the Service.

5. INTELLECTUAL PROPERTY AND DATA

a) General:

Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of Xakia (or its licensors).

b) Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the Xakia Access Fee when due. You grant Xakia a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Services and for provision of the Services to You.

c) Backup of Data:

Xakia allows You to export Your Data through the Website. We recommend that You regularly export and maintain copies of all Data inputted into the Service. Xakia adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. Xakia expressly excludes liability for any loss of Data no matter how caused.

d) Third-party applications and Your Data.

If You enable third-party applications for use in conjunction with the Services, You acknowledge that Xakia may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Services. Xakia shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

Xakia uses Microsoft Azure to host the Services on servers located in Australia. If You are a non-Australian resident, this means that Your Data including Your Personal Information will be transferred to Australia.

By entering Data into the Services, You consent to that Data being hosted on servers located Australia. While Your Data will be stored on servers located in the Australia, it will remain within Xakia's effective control at all times. Our data hosting provider's role is limited to providing a hosting and storage service to Xakia, and we've taken steps to ensure that our data hosting provider does not have access to, and uses the necessary level of protection for, Your Data. They do not control, and are not permitted to access or use Your Data, except for the limited purpose of storing the information. This means that, for the purposes of Australian privacy legislation and Australian users, Xakia does not currently "disclose" the personal information in Your Data to third parties located overseas.

If You do not want Your Data to be transferred to a server located in Australia, You should not provide Xakia with Your Data or use the Service.

e) Security

Xakia is committed to protecting the security of Your Data and we take all reasonable precautions to protect it from unauthorised access, modification or disclosure. Your Data is stored on secure servers that have SSL Certificates issued by leading certificate authorities, and all Data transferred between You and the Service is encrypted.

However, the Internet is not in itself a secure environment and we cannot give an absolute assurance that Your information will be secure at all times. Transmission of Data over the Internet is at Your own risk and You should only enter, or instruct the entering of, Data into the Service within a secure environment.

We will advise You at the first reasonable opportunity upon discovering or being advised of a security breach where Your Data is lost, stolen, accessed, used, disclosed, copied, modified, or disposed of by any unauthorised persons or in any unauthorised manner.

6. WARRANTIES AND ACKNOWLEDGEMENTS

a) Authority:

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

b) Acknowledgement:

You acknowledge that:

- i. You are authorised to use the Services and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person You have authorised to use the Service. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that information and Data is Your own or that of anyone else).
- ii. To the extent permitted by law, Xakia has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than Yourself (whether a body corporate or otherwise) You agree that:
 - A. You are responsible for ensuring that You have the right to do so;
 - B. You are responsible for authorising any person who is given access to information or Data, and You agree that Xakia has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and
 - C. You will indemnify Xakia against any claims or loss relating to:
 - Xakia's refusal to provide any person access to Your information or Data in accordance with these Terms; and
 - Xakia's making available information or Data to any person with Your authorisation.
- iii. The provision of, access to, and use of, the Services is on an "as is" basis and at Your own risk.
- iv. Xakia does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing

the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. Xakia is not in any way responsible for any such interference or prevention of Your access or use of the Services.

- v. Xakia is not Your lawyer and use of the Services does not constitute the receipt of legal advice. If You have any legal questions, please contact a lawyer.
- vi. It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.
- vii. You remain solely responsible for complying with all applicable accounting, tax and other laws. It is Your responsibility to check that storage of and access to Your Data via the Software and the Website will comply with laws applicable to You (including any laws requiring You to retain records).

c) No warranties:

To the extent permitted by law, Xakia gives no warranty about the Services. Without limiting the foregoing, Xakia does not warrant that the Services will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

d) Consumer guarantees:

You warrant and represent that You are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.

7. LIMITATION OF LIABILITY

- a) To the maximum extent permitted by law, Xakia excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings), cost or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.
- c) To the extent permitted by law, Xakia's aggregate Liability in connection with its provision of the Service to You under this Agreement is limited to, at Xakia's option, either: the replacement of any goods or the resupply of any services; or the payment of the cost of replacing any goods or re-supplying the services.
- d) If You suffer loss or damage as a result of Xakia's negligence or failure to comply with these Terms, any claim by You against Xakia arising from Xakia's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months.
- e) If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

8. TERMINATION

a) Trial policy

When You first sign up for access to the Services You can evaluate the Services with no obligation to continue to use the Services. If You choose to continue using the Services thereafter, You will be billed from the day that is one month following the date on which You first added Your billing details into the Services. If You choose not to continue using the Services, You may cancel Your subscription in the 'Admin' section of the Services.

b) Prepaid Subscriptions

Xakia will not provide any refund for any remaining prepaid period for a prepaid Access Fee subscription.

c) No-fault termination:

This Agreement will continue for the period covered by the Access Fee paid or payable under clause 3a). At the end of each billing period this Agreement will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Access Fee when due, unless either party terminates this Agreement by giving notice to the other party at least 30 days before the end of the relevant payment period. If You terminate this Agreement You shall be liable to pay all relevant Access Fees on a pro-rata basis for each day of the then current period up to and including the day of termination of this Agreement.

d) Breach:

If You:

- breach any of these Terms of Use (including, without limitation, by non-payment of any Access Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- breach any of these Terms of Use and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Access Fees that are more than 30 days overdue); or
- You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

Xakia may take any or all of the following actions, at its sole discretion:

- iv. Terminate this Agreement and Your use of the Services and the Website;
- v. Suspend for any definite or indefinite period of time, Your use of the Services and the Website;
- vi. Suspend or terminate access to all or any Data; and
- vii. Take either of the actions in sub-clauses (iv), (v) and (vi) of this clause 8(d) in respect of any or all other persons whom You have authorised to have access to Your information or Data.

For the avoidance of doubt, if payment of any invoice for Access Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organisations (as defined at clause 3) is not made in full by the relevant due date, Xakia may: suspend or terminate Your use of the Service, the authority for all or any of Your Organisations to use the Service, or Your rights of access to all or any Data.

e) Accrued Rights:

Termination of this Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

- i. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- ii. immediately cease to use the Services and the Website.

You must ensure that You use the Services to export Your Data prior to termination of this Agreement.

f) Expiry or termination:

Clauses 3a), 3f), 4, 5, 6, 7, 8 and 10 survive the expiry or termination of these Terms.

9. HELP DESK

a) Technical Problems:

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Xakia. If You still need technical help, please check the support provided online by Xakia on the Website or failing that email Xakia at support@xakiatech.com.

b) Service availability:

Whilst Xakia intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason Xakia has to interrupt the Services for longer periods than Xakia would normally expect, Xakia will use reasonable endeavours to publish in advance details of such activity on the Website.

10. GENERAL

a) Entire agreement:

These Terms of Use, together with the Xakia Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute

the entire agreement between You and Xakia relating to the Services and the other matters dealt with in these Terms of Use.

b) Waiver:

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.c) Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

d) No Assignment:

You may not assign or transfer any rights to any other person without Xakia's prior written consent.

e) Governing law and jurisdiction:

Victorian law governs this Agreement and You submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia for all disputes arising out of or in connection with this Agreement.

f) Severability:

If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

g) Notices:

Any notice given under this Agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Xakia must be sent to legal@xakiatech.com or to any other email address notified by email to You by Xakia. Notices to You will be sent to the email address which You provided when setting up Your access to the Service or as subsequently notified to Xakia in accordance with this Agreement. You consent to receiving emails from Xakia for the purposes of this Agreement and otherwise in connection with Your use of the Service.

h) Rights of Third Parties:

A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.

Effective: 22 May 2018