

Xakia Terms of Use Europe and UK

1. INTRODUCTION

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.

1.4. Definitions

- 1.4.1. "Agreement" means these Terms of Use and the terms of our Privacy Policies applicable to the Customer Data Locations selected by You.
- 1.4.2. "Access Fee" means the 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). If You have selected more than one Customer Data Location for an Invited User, Xakia may elect which of those Customer Data Locations will be used to determine the Access Fee payable for that Invited User.
- 1.4.3. "Billing Period" means the period of either one month or 12 months as elected by You in a notice to us. If You do not make an election it will be one month.
- 1.4.4. "Confidential Information" includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service.

1.4.5. "Customer Data" means any data inputted, or documents uploaded, by You or with Your authority into the Platform, and includes any Personal Information inputted by You or with Your authority into the Platform. Customer Data does not include:

1.4.5.1. data that you export from the Platform;

1.4.5.2. data that is contained in notifications that You set up to be sent from the Platform; or

1.4.5.3. Personal Information that You provide to us by other means (for example emails between us).

To the extent that any such data is Personal Information it is governed by Xakia's applicable Privacy Policies.

1.4.6. "Customer Data Location" means a jurisdiction that has been selected by You for an Invited User, in which Xakia receives and stores Customer Data entered by that Invited User.

1.4.7. "Intellectual Property Right" means any patent, trademark, 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.

1.4.8. "GDPR" means Regulation (EU) 2016/679, also known as the General Data Protection Regulation.

1.4.9. "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.

1.4.10. "Personal Information" has the meaning given to the term "personal data" under the GDPR and includes any similar theory of personally identifiable information or data under applicable Privacy Laws. Under the GDPR, "personal data" means any information relating to an identified or identifiable natural person; where "an identifiable natural person" is one who can be identified, directly or indirectly, in particular by reference to an

identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to some other aspect of the identity of that natural person.

1.4.11. "Platform" means that part of the Website to which You are given the right to log in so as to use the Service, which may include www.app.xakiatech.com.

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

1.4.13. "Privacy Policy" means the Xakia privacy policy (as amended from time to time), applicable to each Customer Data Location selected by You:

1.4.13.1. For Australia: <https://www.xakiatech.com/privacy-policy>;

1.4.13.2. For the USA: <https://www.xakiatech.com/usa-privacy>;

1.4.13.3. For Europe: <https://www.xakiatech.com/privacy-policy>;

and

1.4.13.4. For Canada: <https://www.xakiatech.com/Canadian-privacy-policy>;

1.4.14. "Reserve Bank of Australia's Cash Rate" means the overnight money market interest rate published by the Reserve Bank of Australia on its website.

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

1.4.16. "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.

- 1.4.17. "Website" means the Internet site(s) (including the Platform) operated by Xakia from time to time, which may include www.xakiatech.com.
- 1.4.18. "Xakia" means Xakia Technologies Pty Limited ACN 612 857 593.
- 1.4.19. "You" means the Subscriber, and for the purposes of clauses 3.2, 3.3, 4.4, 5.3, 5.4, 5.5, 6, 7, 9 and 10, an Invited User. "Your" has a corresponding meaning.

2. USE OF SERVICE

- 2.1. Xakia grants You the right to access and use the Service via the Platform 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.
- 2.2. You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and the Invited Users, or any other applicable laws:
- 2.2.1. 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;
 - 2.2.2. the Subscriber selects the Customer Data Location(s) at which an Invited User may access the Service;
 - 2.2.3. the Subscriber is responsible for all Invited Users' use of the Service;
 - 2.2.4. 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

2.2.5. 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 Customer Data or Service that Invited User shall have, if any.

3. YOUR OBLIGATIONS

3.1. Payment obligations

- 3.1.1. The Access Fee for Your Billing Period is payable to Xakia or an affiliate nominated in writing by Xakia in advance starting one month following the date You first registered to use the Service.
- 3.1.2. If You elect to pay by credit card, the Access Fee will be charged to the credit card details that 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 Platform to You or to the billing contact whose details are provided by You.
- 3.1.3. If You do not elect to pay by credit card, we will invoice You for each Billing Period. Invoices are payable 14 days from the date of each invoice.
- 3.1.4. 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. Xakia will, in addition to the Access Fee, charge VAT at the prevailing rate in force, in any case where it is obliged by law to charge VAT.
- 3.1.5. 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.

3.2. General obligations:

3.2.1. You must only use the Service and Website for Your own lawful internal business purposes, in accordance with these Terms of Use and any notice sent by Xakia or condition posted on the Website.

3.2.2. You may use the Service and Platform 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.

3.3. Access conditions:

3.3.1. You must ensure that all usernames and passwords required to access the Platform are kept secure and confidential.

3.3.2. You must immediately notify Xakia of any unauthorised use of Your passwords or any other breach of security. Xakia will then 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 Platform.

3.3.3. As a condition of these Terms of Use, when accessing and using the Platform, You must:

3.3.3.1. not attempt to undermine the security or integrity of the Platform, Xakia's computing systems or networks or, where the Platform is hosted by a third party, that third party's computing systems and networks;

3.3.3.2. not use, or misuse, the Service in any way which may impair the functionality of the Service or Website, or other systems used to deliver the Service or impair the ability of any other user to use the Service or Website;

- 3.3.3.3. not attempt to gain unauthorised access to any materials other than those which You have been given express permission to access or to the computer system on which the Platform is hosted;
- 3.3.3.4. not transmit, or input into the Website, any:
 - 3.3.3.4.1. files that may damage any other person's computing devices or software;
 - 3.3.3.4.2. content that may be offensive; or
 - 3.3.3.4.3. material or Customer Data in violation of any law or rights of others (including Customer Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- 3.3.3.5. except as may be allowed by any applicable law which is incapable of exclusion by agreement, not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Service or to operate the Website except as is strictly necessary to use either of them for normal operation.

3.4. Usage Limitations:

Use of the Service may be subject to limitations such as availability of the Website or availability of the services provided to Xakia by its third-party providers which are necessary inputs to the Service. Any such limitations will be advised as they become known to Xakia.

4. CONFIDENTIALITY AND PRIVACY

4.1. Confidentiality

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

- 4.1.1. 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.

4.1.2. Each party's obligations under this clause will survive termination of this Agreement.

4.2. The provisions of clauses 4.1.1 and 4.1.2 shall not apply to any information which:

4.2.1. is or becomes public knowledge other than by a breach of this clause;

4.2.2. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

4.2.3. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

4.2.4. is independently developed without access to the Confidential Information.

4.3. Xakia may disclose Confidential Information to its related bodies corporate for purposes in connection with the Service including for the provision of technical or account support.

4.4. Privacy

4.4.1. 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 GDPR.

4.4.2. Xakia will comply with all applicable Privacy Laws (including the GDPR) 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.

4.4.3. 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 the Platform and use of the Service, ongoing product and service maintenance and development, and the other purposes set out in the Privacy Policy.

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

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

4.4.5.1. assist it to better understand how its customers are using the Service,

4.4.5.2. provide its customers with further information regarding the uses and benefits of the Service,

4.4.5.3. enhance 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

4.4.5.4. otherwise to improve the Service.

4.4.6. You acknowledge in all cases that Xakia acts as the data processor of Customer Data and You are the data controller of Customer Data under applicable data protection regulations in the European Union and European Economic Area

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

4.4.8. To the extent Xakia processes any Personal Information as part of the Customer Data, that is subject to the GDPR, you may elect to enter into our Data Processing Addendum which is available upon request.

5. INTELLECTUAL PROPERTY AND DATA

5.1. General

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

5.2. Ownership of Customer Data

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

5.3. Backup of Customer Data

5.3.1. Xakia allows You to export some of Customer Data through the Platform. We recommend that You regularly export and maintain copies of that Customer Data.

5.3.2. Xakia adheres to industry standard 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.

5.3.3. If Xakia directly causes or contributes to any loss, corruption or destruction in the accessibility or useability of Customer Data, Xakia will at its own cost and expense, use its reasonable endeavours to restore that Customer Data from the available back-up. This is Xakia's entire obligation and Your sole remedy for loss of Customer Data.

5.4. Third-party applications and Customer Data.

- 5.4.1. If You elect to enable third-party applications for use in conjunction with the Service, You acknowledge that Xakia may then allow the providers of those third-party applications to access Customer Data to the extent that is required for the interoperation of such third-party applications with the Platform. Xakia shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by third-party application providers that have been enabled by You.
- 5.4.2. Xakia uses Microsoft Azure to host the Platform on servers in a number of places. Customer Data that is entered by an Invited User will be transferred to and stored at the Customer Data Location(s) selected by You for that Invited User.
- 5.4.3. By entering Customer Data into the Platform, You consent to that Customer Data being hosted on servers in Your chosen Customer Data Locations. While Customer Data will be stored on servers in those Customer Data Locations, 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 have taken commercially reasonable steps to ensure that our data hosting provider uses the necessary level of protection for, Customer Data. They are not permitted to access or use Customer Data, except for the limited purpose of storing the information.

5.5. Security

- 5.5.1. Xakia is committed to protecting the security of Customer Data and we take all reasonable precautions to protect it from unauthorised access, modification, or disclosure. Customer Data is stored on secure servers that have SSL Certificates issued by

leading certification authorities, and all Customer Data transferred between You and the Platform is encrypted.

5.5.2. 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 Customer Data over the Internet is at Your own risk and You should only enter, or instruct the entering of, Customer Data into the Platform within a secure environment.

5.5.3. We will advise You 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 unauthorised persons or in any unauthorised manner.

6. WARRANTIES AND ACKNOWLEDGEMENTS

6.1. 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 of Use 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 of Use, without limiting Your own personal obligations under these Terms of Use.

6.2. Acknowledgement

You warrant, acknowledge, and agree that:

6.2.1. You are authorised to use the Service and the Platform and to access the information and Customer Data that You input into the Platform, including any information or Customer Data input into the Platform by any Invited User. You are also authorised to access the processed information and Customer Data that is made

available to You through Your use of the Platform and the Service (whether that information and Customer Data is Your own or that of anyone else).

6.2.2. 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.

6.2.3. If You use the Service 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:

6.2.3.1. You are responsible for ensuring that You have the right to do so;

6.2.3.2. You are responsible for authorising any person who is given access to information or Customer Data, and You agree that Xakia has no obligation to provide any person access to such information or Customer Data without Your authorisation and may refer any requests for information to You to address; and

6.2.3.3. The provision of, access to, and use of, the Platform and Service is on an "as is" basis and at Your own risk.

6.2.4. 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 Service. Xakia is not in any way responsible for any such interference or prevention of Your access or use of the Service.

6.2.5. Xakia is not Your lawyer and use of the Service does not constitute the receipt of legal advice. If You have any legal questions, please contact a lawyer.

6.2.6. It is Your sole responsibility to determine that the Service meets the needs of Your business and is suitable for the purposes for which they are used.

6.2.7. 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 Customer Data via the Platform and the Website will comply with laws applicable to You (including any laws requiring You to retain records).

6.3. No warranties

To the extent permitted by law, Xakia gives no warranty about the Service. Without limiting the foregoing, Xakia does not warrant that the Service 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, satisfactory quality, fitness for purpose, title, care and skill, and non-infringement.

6.4. Consumer guarantees

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

7. LIMITATION OF LIABILITY

7.1. 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, reliance on, unavailability of, or failure in, the Service or Website.

- 7.2. To the extent permitted by law, Xakia's aggregate liability in connection with its provision of the Service under this Agreement is limited to, at Xakia's option, either:
- 7.2.1. the resupply of the Service; or
 - 7.2.2. the payment of the cost of re-supplying the Service.
- 7.3. To the extent that clause 7.2 does not apply, Xakia's aggregate liability to You in connection with the Service or Website (including in connection with any claim arising from Xakia's negligence or breach of these Terms of Use) is limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months.
- 7.4. If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms of Use in accordance with Clause 8.
- 7.5. Nothing in these Terms of Use or otherwise in this Agreement shall exclude or limit the liability of any person for:
- 7.5.1. negligence resulting in death or personal injury;
 - 7.5.2. fraudulent misrepresentation or other fraud;
 - 7.5.3. intentional breach of this Agreement; or
 - 7.5.4. otherwise insofar as any exclusion or limitation of that person's liability is void, prohibited or unenforceable by applicable law.
- 7.6. All terms of this Agreement that have as their object or effect the exclusion or limitation of liability shall be read subject to clause 7.5.

8. TERMINATION

8.1. Trial policy and term

- 8.1.1. This Agreement commences when You first register for access to the Service (including for a free trial).
- 8.1.2. During the initial one month trial period You can evaluate the Service with no obligation to continue to use the Service. If You choose to continue using the Service after that, You will be

charged Access Fees from the day that is one month following the date on which You first registered to use the Service. If You choose not to continue using the Service, You may cancel Your subscription in the 'Admin' section of the Platform.

8.1.3. This Agreement will continue for the period covered by the Access Fee paid or payable under clause 3.1. 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.

8.2. Prepaid Subscriptions

Subject to clause 8.5.2, Xakia will not refund any unused part of a prepaid Access Fee subscription.

8.3. No-fault termination

Either party may terminate this Agreement at any time by giving 30 days' notice to the other party. If You terminate this Agreement under this clause You remain liable to pay all Access Fees for the Billing Period during which You terminate.

8.4. Breach

8.4.1. Xakia may take any or all of the actions set out in clause 8.4.2, at its sole discretion if You:

8.4.1.1. breach any of these Terms of Use (including, without limitation, by non-payment of any Access Fees) and the breach is capable of being remedied but You do not remedy the breach within 14 days after receiving notice of the breach;

8.4.1.2. breach any of these Terms of Use and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.3 or any payment of Access Fees that are more than 30 days overdue); or

8.4.1.3. You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed

over 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.

8.4.2. If clause 8.4.1 applies Xakia may:

8.4.2.1. Terminate this Agreement and Your use of the Service and the Platform;

8.4.2.2. Suspend for any definite or indefinite period of time, Your use of the Service and the Platform;

8.4.2.3. Suspend or terminate access to all or any Customer Data; and

8.4.2.4. Take any of the actions in sub-clauses 8.4.2.1 to 8.4.2.3 in respect of any or all other persons whom You have authorised to have access to Your information or Customer Data.

8.5. Changes to Terms of Use

8.5.1. Xakia may need to change these Terms of Use from time to time. If we do change them, we will notify You via email and on the Platform at least 30 days before the changes take effect.

8.5.2. If You do not wish to accept any updated Terms of Use that we publish, You may cancel your subscription before the changes take effect and if Your Billing Period is 12 months you will receive a pro rata refund for any prepaid but unused Access Fees.

8.5.3. 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.

8.6. Accrued Rights:

8.6.1. 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:

8.6.1.1. remain liable for any accrued charges and amounts which become due for payment before or after termination; and

8.6.1.2. immediately cease to use the Service and the Platform.

8.7. You must ensure that You use the Service to export Customer Data prior to termination of this Agreement.

8.8. Expiry or termination:

Clauses 3.1, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of these Terms of Use.

9. HELP DESK

9.1. 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 Platform or failing that email Xakia at support@xakiatech.com.

9.2. Service availability

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

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

10. GENERAL

10.1. Entire agreement

These Terms of Use, together with the 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 Service and the other matters dealt with in this Agreement. Each party acknowledges that, in

entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) that is not expressly set out in this Agreement.

10.2. Waiver

If either party waives any breach of this Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

10.3. Delays

Neither party will be liable for any delay or failure in performance of its obligations under this Agreement 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.

10.4. No Assignment

Neither party may assign or transfer any rights under this Agreement to any other person without the prior written consent of the other, except that Your consent is not required for Xakia in cases of sale of all or substantially all of its business, merger or corporate restructuring.

10.5. Governing law, jurisdiction and dispute resolution

10.5.1. The laws of England govern this Agreement in all respects and You submit to the non-exclusive jurisdiction of the courts of England for all disputes and claims arising out of or in connection with this Agreement, including non-contractual disputes and claims.

10.5.2. 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.

10.5.3. Either party may at any time give written notice to the other (Dispute Notice) requesting that a meeting take place to seek to resolve the Dispute in good faith.

10.5.4. If the Dispute is not resolved within 15 Business Days of the date of that Dispute Notice, it must be referred to mediation in accordance with the International Chamber of Commerce Mediation Rules except as modified by this Agreement or by mutual agreement of the parties and with each party bearing their own cost.

10.5.5. This clause does not prevent a party from bringing proceedings in court to seek urgent interlocutory relief necessary to protect that party's rights.

10.6. **Severability**

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

10.7. **Notices**

10.7.1. Any notice given under these Terms of Use by either party to the other must be in writing by email. 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 these Terms of Use. Notices sent by email are deemed received 72 hours after they are sent, and a non-delivery notification has not been received by the sender.

10.7.2. You consent to receiving emails from Xakia for the purposes of this Agreement and otherwise in connection with Your use of the Service.

10.8. **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 Date: 3 November 2020