

XGENESIS, INC. STANDARD TERMS AND CONDITIONS

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As used in these Standard Terms and Conditions, “we”, “us” and “XGen Ai” means XGenesis Inc., a Delaware Corporation located at 136 Madison Avenue, Manhattan, NY, 10016

1. LICENSE AND RESTRICTIONS

1. XGen Ai Services License. Subject to the terms and conditions of this Agreement, including Customer’s payment of all applicable Services Fees to XGen Ai, XGen Ai hereby grants to Customer a limited, non-exclusive and non-transferable right and license, during the Services Term set forth on the order form executed by XGen Ai and Customer (“Order Form”), limited to such number of MSUPs, and limited to the Deployment URLs and Deployment Regions set forth on the Order Form, to use the XGen Ai Services for its internal business purposes. Customer shall have no right to sublicense any of these rights or licenses to any third party. All capitalized terms used but not defined herein are defined on the Order Form. If Customer desires to adjust the number of MSUPs, the Deployment URLs, Deployment Regions or any other terms and conditions of this Agreement, Customer must contact XGen Ai in writing and agree to any adjustment terms and Services Fee associated with such adjustments.
2. Restrictions. Except as expressly provided in Section 1.1, Customer may not: (a) use the XGen Ai Services, or any portion thereof for any purpose, or (b) resell, sublicense, reproduce, distribute, transfer or otherwise grant access to or transmit the XGen Ai Services to any third party for any purpose, or (c) modify, adapt, alter, translate, or create derivative works from the XGen Ai Services, or (d) allow any third party to resell, sublicense, distribute, transfer or otherwise grant access to or transmit the XGen Ai Services, or (e) reverse engineer, decompile, disassemble or otherwise attempt (i) to defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the XGen Ai Services, including without limitation any such mechanism used to restrict or control the functionality of the XGen Ai Services or (ii) to derive the source code or the underlying ideas, algorithms, structure or organization from the XGen Ai Services; or (f) remove or obfuscate any product identification, copyright or other proprietary notice from any element of the XGen Ai Services or documentation.
3. Limitations. Customer shall not at any time: (i) knowingly make any false or misleading representation with regard to or in connection with its use of XGen Ai Services, or (ii) use XGen Ai Services to engage in illegal or deceptive trade practices or make any other use of XGen Ai Services that could expose XGen Ai to any civil or criminal liability in any jurisdiction.
4. Reserved Rights. Customer shall not be an owner of the XGen Ai Services, or any copies of the XGen Ai Services software, the foregoing only being licensed to Customer subject to the terms and conditions of this Agreement. Except for the limited rights expressly granted in this Section 1, XGen Ai reserves all right, title

and interest in and to the XGen Ai Services, and all technology, information, know-how, documentation or any other intellectual property included in the XGen Ai Services or used in the performance of such XGen Ai Services, together with all intellectual property rights therein and any confidential information of XGen Ai.

2. PAYMENT

1. **Payment Disputes.** In case any Services Fees are not paid in full when due, in addition to any other remedy otherwise available to XGen Ai, XGen Ai may impose overdue charges on the past-due amounts at the rate of 1.5% per month (or, if less, the maximum amount permitted by law) until Customer is current on all payments. Customer shall reimburse XGen Ai for all reasonable costs incurred (including reasonable attorney's fees) in collecting past due amounts owed by Customer. Customer acknowledges that if a payment is delayed, XGen Ai, in addition to any other remedy available to XGen Ai, and not as an election of remedies, may suspend its performance hereunder until no past-due payments are outstanding. Customer agrees that with respect to the amounts debited by XGen Ai from Customer's bank account or charged by XGen Ai to Customer's credit card, if such payment method is designated and authorized by Customer on the Order Form, Customer shall not dispute any such debit or charge with the bank or the credit card company, but shall instead, in the event of any payment dispute, notify XGen Ai of such dispute and cooperate with XGen Ai in resolving such dispute, whereupon, if any amounts are determined to be improperly debited or charged, such amounts will be refunded by XGen Ai directly to Customer. Customer may only dispute the amounts payable hereunder in good faith, upon presentation of clear and convincing evidence to XGen Ai to support Customer's position. XGen Ai reserves the right to terminate this Agreement and Customer's right to use the XGen Ai Services if Customer is in violation of this Section 2.1.

3. WARRANTIES, AND DISCLAIMERS

1. **Warranty.** Each party hereby represents and warrants to the other that (i) such party has the right, power and authority to enter into this Agreement and to fully perform all its obligations hereunder; and (ii) the making of this Agreement does not violate any agreement existing between such party and any third party.
2. **DISCLAIMER.** XGEN AI DOES NOT WARRANT THAT THE XGEN AI SERVICES WILL MEET ALL OF CUSTOMER'S REQUIREMENTS, THAT THE USE OR OPERATION OF THE XGEN AI SERVICES WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE. XGEN AI EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON CUSTOMER'S USE OF THE XGEN AI SERVICES. THE XGEN AI SERVICES ARE PROVIDED ON AN "AS IS" BASIS. XGEN AI MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE RELATING TO THE XGEN AI SERVICES. XGEN AI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR

FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER. THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

4. LEGAL COMPLIANCE. Customer's use of the XGen Ai Services will comply with all applicable laws and regulations.

5. CONFIDENTIALITY

1. Confidential Information. The parties agree that during the course of performance under this Agreement, each party may disclose to the other party certain Confidential Information (defined below) of such disclosing party. "Confidential Information" means any information, technical data or know-how, including, but not limited to, that which relates to research, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances of the disclosing party, which Confidential Information is designated in writing to be confidential or proprietary, or if given orally is confirmed promptly in writing as having been disclosed as confidential or proprietary. Without limiting the generality of the foregoing, anything to the contrary herein notwithstanding, the Confidential Information of XGen Ai shall include the XGen Ai Services and all technical and business information and documentation relating thereto. Confidential Information does not include information, technical data or know-how which (i) is in the possession of the receiving party at the time of disclosure as shown by the receiving party's files and records immediately prior to the time of disclosure; or (ii) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving party, or (iii) is approved for release by the disclosing party, or (iv) is independently developed by the receiving party without the use of any Confidential Information of the other party.
2. Non-Disclosure and Non-Use of Confidential Information. Each of the parties agrees not to use the Confidential Information disclosed to it by the other party for its own use or for any purpose except as necessary in the performance of its obligations under this Agreement. Neither party will disclose the Confidential Information of the other to third parties or to the first party's employees except employees who are required to have the information in order to carry out such parties obligations hereunder. Each party has had or will have employees to whom Confidential Information of the other is disclosed sign a non-disclosure agreement no less protective of the Confidential Information of the other party than this Agreement, and will notify the other in writing of the names of the persons who have had access to Confidential Information of the other party. Each party agrees that it will take use the same standard of care that it uses in protecting its own confidential information to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party and to prevent it from falling into the public domain or the possession of unauthorized persons, but in no case less than reasonable care. Each party agrees to notify the other in writing of any misuse or misappropriation of Confidential Information of the other that may come to its attention. In the event of any expiration or termination of this

Agreement, the receiving party shall return to the disclosing party all copies of such disclosing party's Confidential Information in such receiving party's possession or control.

3. Use of Customer's Name. Customer acknowledges that XGen Ai may desire to use Customer's name and logo in press releases, case studies, testimonials, product brochures, XGen Ai's website and financial reports indicating that Customer is a customer of XGen Ai, and Customer agrees that XGen Ai may use its name and logo in such manner. Upon XGen Ai's request, Customer shall provide XGen Ai with a quote from an executive regarding the XGen Ai Services, which XGen Ai may reasonably include in printed and electronic promotional materials and publications.

6. INDEMNIFICATION.

1. Customer Indemnity. Customer shall indemnify and hold XGen Ai, its affiliates, directors, officers, shareholders, and employees harmless from and against any damages, liabilities, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising from any claims, suits, demands or other proceeding by any third party (collectively, the "Claims") arising out of Customer's (i) use of the XGen Ai Services, (ii) violation of any laws or regulations applicable to the XGen Ai Services or the use thereof, (iii) providing any products or services to third parties, or (iv) any negligence or willful misconduct in connection with, or breach of this Agreement by Customer. Customer shall, at its own expense, defend XGen Ai against any Claim provided that XGen Ai shall promptly notify Customer of any Claim and reasonably cooperate with Customer to facilitate settlement or defense thereof. This paragraph shall survive the expiration or termination of this Agreement.
2. XGen Ai Indemnity. XGen Ai, at its expense, will defend or settle any action brought against Customer by a third party to the extent based on a claim that the XGen Ai Services, as supplied by XGen Ai and when used as provided for by this Agreement, infringes any copyright, trade secret, or United States patent. XGen Ai will pay any award against Customer, or settlement entered into on Customer's behalf, based on such infringement only if Customer notified XGen Ai promptly in writing of the claim, provided reasonable assistance in connection with the defense and/or settlement thereof, and permitted XGen Ai to control the defense and/or settlement thereof. XGen Ai shall have no liability for indemnification where the XGen Ai Services alone would not have given rise to the infringement claim, including without limitation in instances where the alleged infringement is caused by any modification of the XGen Ai Services or combination of the XGen Ai Services with any equipment, programs or data not provided by XGen Ai. In the event of an infringement action against Customer with respect to the XGen Ai Services or documentation, or in the event XGen Ai believes such a claim is likely, XGen Ai shall be entitled, at its option but without obligation, to (i) appropriately modify the XGen Ai Services licensed or made available hereunder, or substitute other XGen Ai Services which, in XGen Ai's good faith opinion, does not infringe any third party intellectual property rights; or (ii) obtain a license with respect to the applicable third party intellectual property rights. If

neither (i) nor (ii) is commercially practicable, XGen Ai may terminate this Agreement and Customer's licenses hereunder. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT, THE FOREGOING STATES XGEN AI'S ENTIRE LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ACTUAL OR ALLEGED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

7. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL XGEN AI BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO XGEN AI'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATION HEREUNDER, IN NO EVENT WILL XGEN AI'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF FEES PAID BY CUSTOMER FOR THE XGEN AI SERVICES GIVING RISE TO THE LIABILITY DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THE PARTIES AGREE THAT THE PRECEDING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK.

8. TERMINATION

1. Termination for Cause. If either party materially breaches or defaults in any of the terms or conditions of this Agreement, including but not limited to the payment of any undisputed fees, then the non-breaching party may give written notice to the defaulting party that if the default is not cured within thirty (30) days the Agreement will be terminated. If the non-defaulting party gives such notice and the default is not cured during the thirty (30) day period, then the non-defaulting party may elect to terminate this Agreement at the end of such cure period.
2. Termination for Insolvency. XGen Ai shall have the right to terminate this Agreement upon written notice to Customer (i) upon the institution by or against Customer of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Customer's debts, (ii) upon Customer making an assignment for the benefit of creditors, or (iii) upon Customer's dissolution or cessation of business.
3. Effect of Termination. Termination of this Agreement shall not relieve the parties of any obligation accruing prior to such termination. Upon any termination of this Agreement, all licenses granted hereunder shall terminate. The provisions regarding data and intellectual property ownership, records and audits, disclaimer of warranties, confidentiality, indemnification, limitations of liability, termination, and any payment obligations shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the parties shall cease upon termination of this Agreement.

9. TERM

1. Agreement Term. The Agreement will remain in effect for the Services Term.

2. **Services Term.** XGen Ai will deliver the Services to the Customer for the Services Term. Unless the parties agree otherwise in writing, Additional Services / Other Services purchased during any Services Term will have a prorated term ending on the last day of the pre-existing Services Term.
3. **Automatic Renewals.** The term of this Agreement shall commence on the Effective Date and, unless terminated in accordance with the terms of this Agreement, shall continue until the expiration of the Services Term. The Services Terms shall automatically renew on the same basis, (as outlined in the Order Form) upon the expiration of the original Services Term as stated in the Order Form and each successive renewal period, unless XGen Ai or Customer provides a written termination notice at least thirty (30) days in advance of the scheduled renewal date.

10. **CHANGES TO SERVICES AND SALES FEE.**

1. **“Platform(s)”** means, (but not limited to) Customer’s website, app, email service, SMS service, social media communication service, Point of Sale system, Customer Relationship Management service or any other service or software the Customer uses to interact with its own customers/Users for its services, products and information and represents the location that the XGen Ai Services will be rendered to. The specific Platform(s) utilizing the XGen Ai Services is identified in the Customer Order Form. **“User/Users”** means a visitor to a Customer’s Platform who has initiated a digital session: the moment a person opens any page of a Platform or site, they are identified as either a new or returning User. Sometimes referred to as Unique Visitors. Users are calculated against a date and time range, i.e., monthly, annually etc.
2. **Changes to Customer Platform(s) User.** XGen Ai’s Services Fees model is based on the Customer’s Platform(s) Users sometimes referred to, (but defined the same) as Unique Visitors, and defined above. XGen Ai reserves the right to adjust the Service Fee of any of the Products or Services as presented on the signed Order Form between the Customer and XGen Ai based on an increase of the Customer’s Users at its sole discretion and will not be obligated to reduce any Sales Fee or Services Fee due to a decrease in Customer’s Platform(s) Users during quoting, Pilot Trial period or the Services Term.
3. **Annual Fee Increase.** XGen reserves the right to increase the Sales Fees each year on the anniversary date of the Start Date, by an amount not to exceed three percent (3%) or the increase in the ECI (U.S. Department of Labor’s Employment Cost Index for Professional, Specialty and Technical Occupations in Private Industry) from the prior calendar year, whichever is lower. XGen will notify Customer of such fee changes at least thirty (30) days in advance of such increase.

11. **GENERAL. THIS AGREEMENT IS MADE IN ACCORDANCE WITH AND WILL BE GOVERNED AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO SUCH STATE’S CONFLICTS OF LAWS PRINCIPLES. IN NO EVENT SHALL THIS AGREEMENT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** All disputes arising out of or related to this Agreement shall be subject to the exclusive jurisdiction and venue of the New York state and federal courts located in New York County and the parties consent to the personal

and exclusive jurisdiction of these courts. This Agreement is the entire agreement between Customer and XGen Ai with respect to the subject matter hereof. Customer may not assign this Agreement, by operation of law or otherwise, without XGen Ai's prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of and be enforceable against the parties and their respective successors and assigns. XGen Ai's failure to enforce Customer's strict performance of any provision of this Agreement will not constitute a waiver of XGen Ai's right to subsequently enforce that provision, or any other provisions of this Agreement. No waiver of any provision hereof will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Except as expressly provided herein, no remedies in this Agreement are exclusive of any other remedies but will be cumulative and shall include all remedies available hereunder or under any other written agreement or in law or equity. XGen Ai shall not be held responsible for any delay or failure in performance hereunder caused in whole or in part by fire, strike, flood, embargo, labor dispute, delay or failure of any subcontract, act of sabotage, riot, accident, delay of carrier or supplier, internet outages, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, or any act or omission or other cause beyond XGen Ai's control. Customer and XGen Ai are independent contractors, and nothing in this Agreement creates any partnership, joint venture, agency, franchise, sales Customer or employment relationship between Customer and XGen Ai. All financial and other obligations associated with Customer's business are the sole responsibility of Customer. Any notice required or permitted to be given under this Agreement shall be in writing and addressed to such other party at its address indicated on the cover page of this Agreement, or to such other address as the addressee shall have last furnished in writing to the addressor, and shall be effective (i) when delivered in person or by courier or confirmed facsimile; (ii) when received by electronic mail at the proper address followed by a reasonable indication of receipt by the recipient; (iii) upon confirmation of receipt when sent by certified mail, return receipt requested; or (iv) upon receipt when sent by reputable private international courier with established tracking capability (such as DHL, FedEx, or UPS), postage pre-paid.