



USER AGREEMENT

1. Introduction	2	17. Limitation of Liability.	11
2. Acceptable Use Policy	2	18. Indemnification.	12
3. Terms	2	19. Waiver of Jury Trial	12
4. Cancellation Policy	3	20. Independent Contractor.	12
5. User's Responsibilities	4	21. Governing Law; Jurisdiction.	12
6. User's Representations and Warranties.	5	22. Entire Agreement; Amendments.	13
7. License to Akatia Technologies	5	23. Severability.	13
8. Billing and Payment.	6	24. Notices	13
9. Akatia Technologies as Reseller or Licensor.	7	25. Waiver.	13
10. Internet Protocol (IP) Address Ownership.	8	26. Assignment; Successors.	14
11. Caching.	8	27. Limitation of Actions.	15
12. CPU Usage.	8	28. Counterparts.	15
13. Bandwidth and Disk Usage.	8	29. Force Majeure.	15
14. Property Rights	9	30. No Third-Party Beneficiaries.	15
15. Disclaimer of Warranty.	10	31. Marketing.	15
16. Limited Warranty.	10		



1. Introduction

This **USER AGREEMENT** ("Agreement") is an agreement between **Akatia Technologies, Inc.**, and the party set forth in the related **REGISTRATION FORM** ("**USER**" or "**YOU**" and "Your") incorporated herein by reference (together with any subsequent Registration Forms or other online signup, acceptance or order form submitted by the **USER**, the **REGISTRATION FORM**), and applies to the purchase of all services ordered by the **USER** on the **REGISTRATION FORM** (collectively, the "**SERVICES**").

As used herein the term "**USER**" and "**YOU**" shall also include any and all users, customers, subscribers, affiliates (including without limitations users or non-users to whom **Akatia Technologies** provides links or banners to promote its services and products or those of any third party; which are offered by, obtained through or in connection with **Akatia Technologies**), resellers or others

- (i) who sign up for, use or obtain services or products from **Akatia Technologies** or from any third party services or products of which are offered by or obtained through or in connection with **Akatia Technologies**
- (ii) who visit the Web sites of **Akatia Technologies** or of any such third party.

PLEASE READ THIS AGREEMENT CAREFULLY!

Signing up for the services creates a contract between you and us, consisting of the order, the applicable service description and this user agreement. **YOU** are agreeing to be bound by the terms of this agreement and all terms and conditions incorporated by reference in this agreement, including our **ACCEPTABLE USE POLICY**. Your use of the services constitutes acceptance of this agreement.

2. Acceptable Use Policy

Under this **AGREEMENT**, the **USER** shall comply with **Akatia Technologies'** then current **ACCEPTABLE USE POLICY** ("AUP"), as amended, modified or updated from time to time by **Akatia Technologies**, and other agreements which currently can be viewed under the **TERMS OF SERVICE** section of this Web site (collectively, the "**TERMS OF SERVICE**"), and which is incorporated in this **AGREEMENT** by reference.

- A. **USER** hereby acknowledges that it has reviewed the AUP and that the terms of the AUP are incorporated herein by reference.
- B. In the event of any inconsistencies between this **AGREEMENT** and the AUP, the terms of the AUP shall govern.
- C. **Akatia Technologies** does not intend to systematically monitor the content that is submitted to, stored on or distributed or disseminated by the **USER** via the Service (the **USER CONTENT**).
- D. **USER CONTENT** includes any and all content of which the **USER** has read/write access to. Accordingly, under this **AGREEMENT**, **YOU** will be responsible for your users content and activities on your account.
- E. Notwithstanding anything to the contrary contained in this **AGREEMENT**, **Akatia Technologies** may immediately take corrective action, including removal of all or a portion of the **USER CONTENT**, disconnection or discontinuance of any and all Services, or termination of this **AGREEMENT** in the event of notice of possible violation by **USER** of the AUP.
- F. In the event **Akatia Technologies** takes corrective action due to a violation of the AUP, **Akatia Technologies** shall not refund to **USER** any fees paid in advance of such corrective action. **USER** hereby agrees that **Akatia Technologies** shall have no liability to **USER** or any of **USER's** users due to any corrective action that **Akatia Technologies** may take (including, without limitation, suspension, termination or disconnection of Services).

3. Terms

The initial term of this **AGREEMENT** shall be as set forth in the **REGISTRATION FORM** (the "Initial Term").

- A. The Initial Term shall begin upon commencement of the Services to **USER**.
- B. After the Initial Term, this **AGREEMENT** shall automatically renew.



- C. Should the **USER** have agreed to automatic billing, **Akatia Technologies** will automatically bill and/or charge on your credit card for successive terms of equal length as the initial term, unless terminated or cancelled by either party as provided in this section.
- D. The **INITIAL TERM** and all successive renewal periods shall be referred to, collectively, as the "Term".
- E. This **AGREEMENT** may be terminated or cancelled;

4. Cancellation Policy

This **AGREEMENT** may be terminated or cancelled at anytime *by either party*

- A. by giving the other party thirty (30) days prior written notice
 - (i) If an account with a thirty (30) day money-back guarantee is purchased and cancelled within thirty (30) days of sign-up, the **USER** will, upon request, receive a full refund of all **SAAS** (Software as a Service) fees. Requests for these refunds should be made through our support team. Refunds made for a thirty (30) day money-back guarantee will not include setup fees, nor will they include any fees for additional services that are purchased in the first thirty (30) days.
 - (ii) The thirty (30) day money-back guarantee is valid for credit-card payments only. Due to the costs associated with processing payments made by other methods, we are not able to offer the thirty (30) day money-back guarantee for other payment methods.
- B. This **AGREEMENT** may be terminated or cancelled by **Akatia Technologies**
 - (i) in the event of non-payment by **USER**
 - (ii) at any time, without notice, if, in **Akatia Technologies'** sole and absolute discretion and/or judgment, (a) **USER** is in violation of any term or condition of this **AGREEMENT** and related agreements, AUP or (b) **USER's** use of the Services disrupts **Akatia Technologies'** business operations .
 - (iii) **Akatia Technologies** may terminate this **AGREEMENT**, without penalty if the Services are prohibited by applicable law, or become impractical or unfeasible for any technical, Terms of Service or regulatory reason, by giving **USER** as much prior notice as reasonably practicable;
 - (iv) If **Akatia Technologies** cancels this **AGREEMENT** prior to the end of the Term for Your breach of this **AGREEMENT** and related agreements, **Akatia Technologies** shall not refund to **YOU** any fees paid in advance of such cancellation and **YOU** shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation; further, We may charge **YOU** 100% of all charges for all Services for each month remaining in the Term and **Akatia Technologies** shall have the right to charge **YOU** an administrative fee of a minimum of \$35
- C. This **AGREEMENT** may be terminated or cancelled at anytime *by the user*
 - (i) Provided that we may charge **YOU** a minimum \$35.00 charge as an early cancellation fee.
 - (ii) If **YOU** cancel this **AGREEMENT**, upon proper notice to **Akatia Technologies**, prior to the end of the **INITIAL TERM** or any term thereafter, **YOU** shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation;
 - (iii) Any cancellation request shall be effective thirty (30) days after receipt by **Akatia Technologies**, unless a later date is specified in such request.
 - (iv) **Akatia Technologies** may (but is not obligated to) refund to **YOU** all pre-paid **SAAS** fees for the full months remaining after effectiveness of cancellation (i.e., no partial month fees shall be refunded). If this course of action is chosen, the refund will not include setup fees, cancellation fees, and discounts applied for prepayment.
 - (v) Akatia Technologies does not refund pre-paid **SAAS** fees if you are in breach of any terms and conditions of this **USER AGREEMENT** and any other applicable policy.



- (vi) **Akatia Technologies** reserves the right to charge YOU one hundred percent (100%) of all charges for all services for each month remaining in the Term.
- (vii) YOU have ninety (90) days to dispute any charge or payment processed by **Akatia Technologies**. If you have a question concerning a charge you believe is incorrect, please contact **Akatia Technologies**.

5. User's Responsibilities

- A. The USER is solely responsible for the quality, performance and all other aspects of the USER Content and the goods or services provided through the USER'S SAAS.
- B. The USER will cooperate fully with **Akatia Technologies** in connection with **Akatia Technologies'** provision of the services.
 - (i) The USER must provide any equipment or software that may be necessary for the USER to use the Services. Delays in USER's performance of its obligations under this AGREEMENT will extend the time for **Akatia Technologies'** performance of its obligations that depend on USER's performance on a day for day basis.
 - (ii) The USER must provide complete, correct and genuine contact information in the REGISTRATION FORM and update such information as necessary from time to time so it remains complete, correct and genuine at all times; failure to do so may result in suspension or cancellation of Services.
 - (iii) USER will notify **Akatia Technologies** of any change in USER's mailing address, telephone, electronic mail or other contact information. USER is responsible for ensuring that **Akatia Technologies** is able to notify the USER for technical, billing or other issues or purposes deemed necessary by **Akatia Technologies** to maintain the account.
- C. USER assumes full responsibility for providing end users with any required disclosure or explanation of the various features of the USER'S SAAS and any goods or services described therein, as well as any rules, terms or conditions of use.
- D. Because the Services permit users to electronically transmit or upload content directly to the USER CONTENT, the USER shall be fully responsible for uploading all content to the USER CONTENT and supplementing, modifying and updating the USER CONTENT, including all back-ups.
- E. USER is responsible for ensuring that the USER CONTENT and all of its aspects are compatible with the hardware and software used by **Akatia Technologies** to provide the services, as the same may be changed by **Akatia Technologies** from time to time.
 - (i) **Akatia Technologies** shall not be responsible for any damages to the USER CONTENT or other damages or any malfunctions or service interruptions caused by any failure of the USER CONTENT or any of its aspect to be compatible with the hardware and software used by **Akatia Technologies** to provide the Services.
- F. Unless specifically specified in the INITIAL TERMS of agreements, the USER is solely responsible for making back-up copies of the USER Web site and USER Content.
 - (i) **Akatia Technologies** does not maintain backup copies of USER CONTENT and cannot guarantee that the content will never be deleted or corrupted, or that a backup will always be available.
 - (ii) **Akatia Technologies** strongly suggest that the USER should always copy all contents to a local computer and
- G. The USER is responsible for maintaining the confidentiality of login and billing information and must
 - (i) notify **Akatia Technologies** immediately of any unauthorized use of any password or account or any other known or suspected breach of security
 - (ii) report to **Akatia Technologies** immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users
 - (iii) not impersonate another **Akatia Technologies** user or provide false identity information to gain access to or use the Service.
- H. **Akatia Technologies** is not liable for any account disputes that may arise between various parties holding account login information. **Akatia Technologies** is not responsible for any changes made to the account or any information that has



been modified by the **USER**, or any parties authorized by the **USER**, who has access the administrative feature of the SaaS.

6. User's Representations and Warranties.

The **USER** hereby represents and warrants to **Akatia Technologies**, and agrees that during the Initial Term and any Term thereafter **USER** will ensure that:

- A. The **USER** is the owner or valid licensee of the **USER CONTENT** and each element thereof, and the **USER** has secured all necessary licenses, consents, permissions, waivers and releases for the use of the **USER CONTENT** and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by **Akatia Technologies** to pay any fees, residuals, guild payments or other compensation of any kind to any Person;
- B. The **USER's** use, publication and display of the **USER CONTENT** will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated;
- C. The **USER** will comply with all applicable laws, rules and regulations regarding the **USER CONTENT** and will use its account only for lawful purposes;
- D. The **USER** has used its best efforts to ensure that the **USER CONTENT** is and will at all times remain free of all computer viruses, worms, Trojan horses and other malicious code.
- E. The **USER** shall be solely responsible for the accuracy and appropriateness of the **USER CONTENT** and material appearing in its store or on its products,
 - (i) ensuring that the **USER CONTENT** and materials appearing in its store or on its products do not violate or infringe upon the rights of any person, and
 - (ii) ensuring that the **USER CONTENT** and materials appearing in its store or on its products are not defamatory or otherwise illegal.
 - (iii) **USER** shall be solely responsible for accepting, processing and filling **USER** orders and for handling **USER** inquiries or complaints. **USER** shall be solely responsible for the payment or satisfaction of any and all taxes associated with its **SAAS**.
- F. The **USER** grants **Akatia Technologies** the right to reproduce, copy, use and distribute all and any portion of the **USER CONTENT** to the extent needed to provide and operate the Services.
- G. In addition to transactions entered into by **YOU** on your behalf, **YOU** also agree to be bound by the terms of this **AGREEMENT** for transactions entered into on your behalf by anyone acting as your agent, and transactions entered into by anyone who uses your account, whether or not the transactions were on your behalf.

7. License to Akatia Technologies

- A. The **USER** hereby grants to **Akatia Technologies** a non-exclusive, royalty-free, worldwide right and license during the **INITIAL TERM** and any Term thereafter to do the following to the extent necessary in the performance of Services under the Order: digitize, convert, install, upload, select, order, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly display, publicly perform and hyperlink the **USER CONTENT**; and make archival or back-up copies of the **USER CONTENT**.
- B. Except for the rights expressly granted above, **Akatia Technologies** is not acquiring any right, title or interest in or to the **USER CONTENT**, all of which shall remain solely with **USER**.
- C. **Akatia Technologies**, in its sole discretion, reserves the right



- (i) to deny, cancel, suspend, transfer or alter, modify, correct, amend, change, program, or take any other corrective action to protect the integrity and stability of the Services (including altering, modifying, correcting, amending, changing, programming, or taking any other corrective action regarding any malicious code, software or related abusive activity, **USER CONTENT** and/or Web site(s))
- (ii) to comply with any applicable laws, government rules, or requirements, requests of law enforcement, or to avoid any liability, civil or criminal. **USER** further agrees that **Akatia Technologies** shall not be liable to **USER** for any loss or damages that may result from such conduct.

8. Billing and Payment.

USER will pay to **Akatia Technologies** the service fees for the Services in the manner set forth in the **REGISTRATION FORM**.

- A. Unless stated otherwise, a reference to 'dollar' or '\$' is a reference to both USA and Canadian currency. All fees or other amounts hereunder shall be payable in CAN or USA currency.
- B. If we make any refunds due to charges you dispute with your credit card, we will cancel your account. The cancelled account will only be reactivated once all disputed/refunded fees are resolved satisfactorily, and we receive payment for any and all administrative fees incurred by **Akatia Technologies** as a result of your dispute or charge-back request. We cannot guarantee any files or e-mail will be available upon reactivation.
- C. It is a violation of this **AGREEMENT** for you to misuse or fraudulently use credit cards, charge cards, electronic funds transfers, and/or electronic checks. A determination of such misuse or fraudulent use shall be in our sole discretion. Further, we may report all such misuses and fraudulent uses (as determined by us in our sole discretion) to appropriate government and law enforcement authorities, credit reporting services, financial institutions and credit card companies. In these situations, you shall have waived any and all rights to privacy.
- D. All pricing terms are confidential, and you agree not to disclose them to any third party.

E. Fees And Payment Related Charges

- (i) **Akatia Technologies** may increase the Service Fees (i) in the manner permitted in the service description and (ii) at any time on or after expiration of the **INITIAL TERM** by providing ten (10) days prior written notice thereof to **USER**.
- (ii) The Service Fees do not include any applicable sales, use, revenue, excise or other taxes imposed by any taxing authority with respect to the Services or any software provided hereunder (excluding any tax on **Akatia Technologies'** net income). All such taxes may be added to **Akatia Technologies'** invoices for the fees as separate charges to be paid by the **USER**. All fees are fully earned when due and non-refundable when paid.
- (iii) Unless otherwise specified, all initial fees shall be payable upon signup, and all subsequent fees and related charges shall be due and payable when billed, if by credit card, or if not by credit card, within thirty (30) days after the date of the invoice.
- (iv) If any invoice is not paid within seven (7) days after the date of the invoice, **Akatia Technologies** may charge **USER** a late fee of \$15.00 for; in addition any amounts payable to **Akatia Technologies** not paid when due will bear interest at the rate of one and one half percent (4%) per month or the maximum rate permitted by applicable law, whichever is less.
- (v) If **Akatia Technologies** collects any payment due at law or through an attorney at law or under advice there from or through a collection agency, or if **Akatia Technologies** prevails in any action to which the **USER** and **Akatia Technologies** are parties, the **USER** will pay all costs of collection, arbitration and litigation, including, without limitation, all court costs and **Akatia Technologies'** reasonable attorneys' fees.
- (vi) If any check is returned for insufficient funds **Akatia Technologies** may impose a minimum processing charge of \$25.00.
- (vii) In the event that any amount due to **Akatia Technologies** is not paid when due, Akatia Technologies, in its sole discretion, may immediately terminate this **AGREEMENT**, and/or withhold or suspend Services.
- (viii) There may be a minimum \$50.00 charge to reinstate accounts that have been suspended or terminated.



- (ix) Wire transfers will be assessed a minimum \$35.00 charge.

F. Pre-charges

- (i) **USER** acknowledges and agrees that **Akatia Technologies** may pre-charge **USER**'s fees for the Services to its credit card supplied by **USER** during registration for the Initial Term.

You acknowledge, agree and authorize us to automatically bill and/or charge on your credit card for successive terms of equal length as the initial term, unless terminated or cancelled by either party as provided in section.

G. Recurrent Charges

- (i) Payment Processing **Akatia Technologies'** preferred method of payment is credit card.
- (ii) By purchasing our **SAAS** services, you are agreeing to allow **Akatia Technologies** to place your account on a recurring payment plan. The account will automatically be re-billed according to the terms of the plan you select.
- (iii) **YOU** grant **Akatia Technologies** permission to charge your credit card for any and all services you request, including, but not limited to, hosting and/or domain name renewals.
- (iv) If we are unable to process a payment for your hosting plan by its due date, your account will be cancelled for non-payment and you will not be able to access your Account.
- (v) All **SAAS** fees are due on or before the due date of the renewing account.

H. Accounts: Cancel/suspend/terminate

- (i) When an account is cancelled, all files are permanently and irretrievably removed from our servers 10 days after the account is cancelled.
- (ii) If an account has been suspended for non-payment, it will only be reactivated upon payment of all overdue fees.
- (iii) Incomplete, incorrect or questionable signup information can result in an account being suspended or terminated or NOT being activated. Some accounts may be placed on hold for up to 72 hours, pending review of information received.
- (iv) Any losses or expenses experienced by the **USER**, due to actions taken by **Akatia Technologies** in response to Users non-payment, are not the responsibility of Akatia Technologies.

9. Akatia Technologies as Reseller or Licensor.

- A. **Akatia Technologies** is acting only as a reseller or licensor of certain services, hardware, software and equipment used in connection with the products and/or Services that were or are manufactured or provided by a third party ("Non-**Akatia Technologies** Product").
- B. **Akatia Technologies** shall not be responsible for any changes in the Services that cause the Non-**Akatia Technologies** Product to become obsolete, require modification or alteration, or otherwise affect the performance of the Services.
- C. Any malfunction or manufacturer's defects of Non-**Akatia Technologies** Product either sold, licensed or provided by **Akatia Technologies** to the **USER** or purchased directly by the **USER** used in connection with the Services will not be deemed a breach of **Akatia Technologies'** obligations under this **AGREEMENT**.
- D. Any rights or remedies the **USER** may have regarding the ownership, licensing, performance or compliance of Non-**Akatia Technologies** Product are limited to those rights extended to the **USER** by the manufacturer of such Non-**Akatia Technologies** Product.
- E. The **USER** is entitled to use any Non-**Akatia Technologies** Product supplied by **Akatia Technologies** only in connection with **USER**'s permitted use of the Services.



- F. The **USER** shall use its best efforts to protect and keep confidential all intellectual property provided by **Akatia Technologies** to the **USER** through any Non-**Akatia Technologies** Product and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Services.
- G. The **USER** shall not resell, transfer, export or re-export any Non-**Akatia Technologies** Product, or any technical data derived therefrom, in violation of any applicable United States or foreign law.

10. Internet Protocol (IP) Address Ownership.

- A. If **Akatia Technologies** assigns the **USER** an Internet Protocol ("IP") address for the **USER**'s use, the right to use that IP address shall belong only to Akatia Technologies, and the **USER** shall have no right to use that IP address except as permitted by **Akatia Technologies** in its sole and absolute discretion in connection with the Services, during the term of this **AGREEMENT**.
- B. **Akatia Technologies** shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to the **USER** by Akatia Technologies, and **Akatia Technologies** reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion.

11. Caching.

- A. The **USER** expressly grants to **Akatia Technologies** a license to cache the entirety of the **USER CONTENT**, including content supplied by third parties, hosted by **Akatia Technologies** under this **AGREEMENT** and agrees that such caching is not an infringement of any of the **USER**'s intellectual property rights or any third party's intellectual property rights.

12. CPU Usage.

- A. The **USER** agrees that the **USER** shall not use excessive amounts of CPU processing on any of **Akatia Technologies'** servers. Any violation of this policy may result in corrective action by Akatia Technologies, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this **AGREEMENT**, which actions may be taken in **Akatia Technologies'** sole and absolute discretion.
- B. If **Akatia Technologies** takes any corrective action under this section, the **USER** shall not be entitled to a refund of any fees paid in advance prior to such action.

13. Bandwidth and Disk Usage.

Akatia Technologies provides users with bandwidth, disk space and other resources, such as e-mail and/or file-transfer-protocol ("FTP") accounts, the amount of which is defined in **Akatia Technologies'** web pages describing the package of Services purchased at the time of purchase.

A. Normal Usage

- (i) In some cases, **Akatia Technologies** may not establish a specific amount of bandwidth, disk space and other resources, and refer to that as "Unlimited". In all cases, the Services are intended for normal use only, and any activity that results in excessive usage that is inconsistent with normal usage patterns is strictly prohibited.
- (ii) **Akatia Technologies** reserves the right to suspend, discontinue or delete the accounts of Users whose use of disk space, bandwidth or other resources results in or presents the risk of degradation of service to other customers, regardless of the amount of disk space, bandwidth or other resources included in the **USER**'s plan.
- (iii) The **USER** agrees that such usage shall not exceed the amounts set by **Akatia Technologies** for the Services purchased (the "Agreed Usage") and is additionally subject to normal usage guidelines established by **Akatia Technologies** as in effect from time to time.
- (iv) Hosting space is intended for normal use only, and is limited to Web files, active e-mail and content of the host **SAAS**, not for storage (whether of media, e-mails, or other data). Hosting space further may not be used as offsite storage of electronic files, electronic mail or FTP hosts.
- (v) **YOU** are responsible for removing any files, e-mails or other data which do not meet these requirements, and for adhering to any usage requirements or limits allocated to your account(s). Failure to do so may result in removal and deletion of such materials (including without limitation files and e-mails), and/or in discontinuation of your services or account, which actions we may take in our sole discretion.



- (vi) **USER** is responsible for complying with any usage requirements or limits for bandwidth, disk space or other resources, and monitoring such usage to ensure the **USER CONTENT** does not violate such requirements or exceed any such limits allocated for the account(s) and otherwise complies with this **AGREEMENT**.

B. Corrective Actions

- (i) **Akatia Technologies** will monitor **USER**'s use of bandwidth, disk usage and other resources.
- (ii) **Akatia Technologies** will use commercially reasonable efforts to e-mail Users who are at or near their utilization limits, but **Akatia Technologies** does not take responsibility if e-mail notification(s) is not received by the **USER**. **Akatia Technologies** reserves the right to discontinue service through the beginning of the next month for your account in the event that it exceeds the any such allotment.
- (iii) **Akatia Technologies**, in its sole discretion, shall have the right to take any corrective action if **USER**'s utilization of bandwidth, disk usage or other resources exceeds the Agreed Usage, normal usage, or is used for other improper storage or usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, removal or deletion of **USER CONTENT**, **USER**'s electronic mail and e-mail services and/or other materials and services or termination the **USER**'s account and of this **AGREEMENT**, which actions may be taken in **Akatia Technologies**' sole and absolute discretion.
- (iv) **USER** shall not be entitled to a refund or credit of any fees paid prior to corrective action.

C. Unacceptable Usage

- (i) **USER** may not utilize: the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization; the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party; the Services to traffic in illegal drugs, gambling, obscene materials or any other products or services that are prohibited under applicable law; the Services to export encryption software to points outside the United States in violation of applicable export control laws; the Services to forge or misrepresent message headers, whether in whole or in part, to mask the originator of the message.
- (ii) You may not access the Service if you are a direct competitor of **Akatia Technologies**, except with **Akatia Technologies**'s prior written consent.
- (iii) You may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- (iv) If **Akatia Technologies** learns or discovers that **USER** is violating any law related to the **USER CONTENT** and/or **USER**'s electronic mail services, use of bandwidth, disk usage or other resources or Agreed Usage, **Akatia Technologies** may be obligated to or may in its discretion inform the necessary law enforcement and/or any related agency(ies) of such conduct and may provide such agency(ies) with information related to the **USER**, **USER CONTENT** and/or **USER**'s electronic mail.

14. Property Rights

- A. **Akatia Technologies** hereby grants to **USER** a limited, non-exclusive, non-transferable, royalty-free license, exercisable solely during the term of this **AGREEMENT**, to use **Akatia Technologies** technology, products and services solely for the purpose of accessing and using the Services.
- B. **USER** may not use **Akatia Technologies**' technology for any purpose other than accessing and using the Services. Except for the rights expressly granted above, this **AGREEMENT** does not transfer from **Akatia Technologies** to **USER** any **Akatia Technologies** technology, and all rights, titles and interests in and to any **Akatia Technologies** technology shall remain solely with Akatia Technologies.
- C. **USER** shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the **Akatia Technologies**.



- D. **Akatia Technologies** owns all right, title and interest in and to the Services and **Akatia Technologies'** trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other intellectual property rights relating to the design, function, marketing, promotion, sale and provision of the Services and the related hardware, software and systems ("Marks").
- E. Noting in this **AGREEMENT** constitutes a license to **USER** to use or resell the Marks.

15. Disclaimer of Warranty.

- A. **USER** agrees to use all Services and any information obtained through or from Akatia Technologies, at **USER**'s own risk.
- B. **USER** acknowledges and agrees that **Akatia Technologies** exercises no control over, and accepts no responsibility for, the content of the information passing through **Akatia Technologies'** host computers, network hubs and points of presence or the Internet.
- C. The services provided under this agreement are provided on an as is, as available basis. Neither we nor any of our parent, subsidiary or affiliated corporations, or any of their respective employees, officers, directors, shareholders, affiliates, agents, attorneys, suppliers, third-party information providers, merchants, licensors or the like (each, a "related person") make any warranties of any kind, either expressed or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, or non-infringement, for the services or any equipment we provide.
- D. No related person makes any warranties that the services will not be interrupted or error free; nor do any of them make any warranties as to the results that may be obtained from the use of the services or as to the accuracy, reliability or content of any information, services or merchandise contained in or provided through the services.
- E. We are not liable, and expressly disclaims any liability, for the content of any data transferred either to or from user or stored by user or any of user's users via the services provided by us no oral advice or written information given by any related person, will create a warranty; nor may you rely on any such information or advice.
- F. The 99.9% uptime guarantee as advertise on our website represents the ratio of overall functioning service vs. time excluding the following:
 - a. failure that may occur by the **USER's** internet service provider
 - b. failure that may occur on the hardware of the **USER**
 - c. downtime due to regular maintenance or system upgrade by **Akatia Technologies**
 - d. Although **Akatia Technologies** will send by email a warning to user's concerning a possible temporary shutdown of the system while maintenance is done, **Akatia Technologies** will not be held responsible if such users hasn't been warned and therefore cannot access the system for a period of time.
 - e. **Akatia Technologies** has the right to perform maintenance and upgrade at any given time when it is considered necessary.
- G. The terms of this section shall survive any termination of this **AGREEMENT**.

16. Limited Warranty.

- A. **Akatia Technologies** represents and warrants to the **USER** that the Services will be performed
 - (i) in a manner consistent with industry standards reasonably applicable to the performance thereof;
 - (ii) at least at the same level of service as provided by **Akatia Technologies** generally to its other Users for the same services;
 - (iii) in compliance in all material respects with the applicable Service Descriptions.



- B. The **USER** will be deemed to have accepted such Services unless the **USER** notifies **Akatia Technologies**, in writing, within thirty (30) days after performance of any Services of any breach of the foregoing warranties.
- C. **USER's** sole and exclusive remedy, and **Akatia Technologies'** sole obligation, for breach of the foregoing warranties shall be for **Akatia Technologies**, at its option, to re-perform the defective Services at no cost to the **USER**, or, in the event of interruptions to the Services caused by a breach of the foregoing warranties, issue the **USER** a credit in an amount equal to the current monthly service fees pro rated by the number of hours in which the Services have been interrupted.
- D. **Akatia Technologies** may provision the Services from any of its data centers and may from time to time re-provision the Services from different data centers.
- E. The foregoing warranties shall not apply to performance issues or defects in the Services
 - (i) caused by factors outside of **Akatia Technologies'** reasonable control
 - (ii) that resulted from any actions or inactions of **USER** or any third parties
 - (iii) that resulted from **USER's** equipment or any third-party equipment not within the sole control of Akatia Technologies
- F. Except as expressly provided in this section, we make no representations or warranties of any kind, express or implied, with respect to the services or any software provided under this agreement, including, without limitation, any warranty of merchantability, fitness for a particular purpose, title or non-infringement of third-party rights, and we hereby expressly disclaim the same.
- G. Without limiting the foregoing, any third-party product or service provided to user hereunder is provided "as is" without any condition or warranty whatsoever. We do not warrant that the services will be uninterrupted, error-free or completely secure.

17. Limitation of Liability.

- A. In no event will our liability in connection with the services, any software provided hereunder or any order, whether caused by failure to deliver, non-performance, defects, breach of warranty or otherwise, exceed the aggregate service fees paid to us by you during the 3-month period immediately preceding the event giving rise to such liability.
- B. We cannot guarantee continuous service, service at any particular time, integrity of data, information or content stored or transmitted via the internet. We will not be liable for any unauthorized access to, or any corruption, erasure, theft, destruction, alteration or inadvertent disclosure of, data, information or content transmitted, received or stored on its system.
- C. Except as expressly provided below, neither party shall be liable in any way to the other party or any other person for any lost profits or revenues, loss of use, loss of data or costs of procurement of substitute goods, licenses or services or similar economic loss, or for any punitive, indirect, special, incidental, consequential or similar damages of any nature, whether foreseeable or not, under any warranty or other right hereunder, arising out of or in connection with the performance or non-performance of any order, or for any claim against the other party by a third party, regardless of whether it has been advised of the possibility of such claim or damages.
- D. The limitations contained in this Section apply to all causes of action in the aggregate, whether based in contract, tort or any other Terms of Service theory (including strict liability), other than claims based on fraud or wilful misconduct.
- E. Notwithstanding anything to the contrary in this **AGREEMENT**, **Akatia Technologies'** maximum liability under this **AGREEMENT** for all damages, losses, costs and causes of actions from any and all claims (whether in contract, tort, including negligence, quasi-contract, statutory or otherwise) shall not exceed the actual dollar amount paid by the **USER** for the Services which gave rise to such damages, losses and causes of actions during the 3-month period prior to the date the damage or loss occurred or the cause of action arose.
- F. The **USER** understands, acknowledges and agrees that if **Akatia Technologies** takes any corrective action under this **AGREEMENT** because of an action of the **USER** or one of its Users or a reseller, that corrective action may adversely affect other Users of the **USER** or other reseller Users, and the **USER** agrees that **Akatia Technologies** shall have no liability to the **USER**, any of its Users or any Reseller **USER** due to such corrective action by **Akatia Technologies**.



- G. This limitation of liability reflects an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this **AGREEMENT**. The terms of this section shall survive any termination of this **AGREEMENT**.

18. Indemnification.

- A. **USER** agrees to indemnify, defend and hold harmless **Akatia Technologies** and its parent, subsidiary and affiliated companies, and each of their respective officers, directors, employees, shareholders, attorneys and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against
- (i) any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to **USER**'s use of the Services;
 - (ii) any violation by **USER** of the AUP
 - (iii) any breach of any representation, warranty or covenant of **USER** contained in this **AGREEMENT** or
 - (iv) any acts or omissions of **USER**.
- B. The terms of this section shall survive any termination of this **AGREEMENT**.

19. Waiver of Jury Trial

- A. Both **YOU** and **Akatia Technologies** hereby agree to waive all respective rights to a jury trial of any claim or cause of action related to or arising out of this **AGREEMENT**.
- B. The scope of the waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims.
- C. **YOU** and **Akatia Technologies** each acknowledge that the waiver is a material inducement for each party to enter into a business relationship, that each party has already relied on the waiver in entering into this **AGREEMENT** and that each will continue to rely on the waiver in their related future dealings.
- D. Each party further warrants and represents that each has had the opportunity to have counsel review this **AGREEMENT** and this waiver.
- E. The waiver is irrevocable, meaning that it may not be modified either orally or in writing, and the waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this **AGREEMENT**. In the event of litigation, this **AGREEMENT** may be filed as written consent to a trial by court.

20. Independent Contractor.

- A. **Akatia Technologies** and the **USER** are independent contractors and nothing contained in this **AGREEMENT** places **Akatia Technologies** and the **USER** in the relationship of principal and agent, master and servant, partners or joint venturers.
- B. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

21. Governing Law; Jurisdiction.

- A. Any controversy or claim arising out of or relating to this **AGREEMENT**, the formation of this **AGREEMENT** or the breach of this **AGREEMENT**, including any claim based upon arising from an alleged tort, shall be governed by the substantive laws of the Québec, Canada.
- B. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this **AGREEMENT**. Any suit, action or proceeding concerning this agreement must be brought in a provincial or federal court located in Montreal, Québec, Canada.



- C. Each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.
- D. Certain states, provinces and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

22. Entire Agreement; Amendments.

- A. The headings herein are for convenience only and are not part of this **AGREEMENT**.
- B. This **AGREEMENT**, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and this **AGREEMENT** constitutes the sole and entire agreement between the parties with respect to the matters covered hereby.
- C. In case of a conflict between this **AGREEMENT** and any purchase order, service order, work order, confirmation, correspondence or other communication of the **USER** or **Akatia Technologies**, the terms and conditions of this **AGREEMENT** shall control.
- D. No additional terms or conditions relating to the subject matter of this **AGREEMENT** shall be effective **unless** approved in writing by authorized representatives of the **USER** and **Akatia Technologies**.
- E. This **AGREEMENT** may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms of Service may be modified from time to time by **Akatia Technologies** in its sole discretion, which modifications will be effective upon posting to **Akatia Technologies'** Web site. A notification will then be sent to the **USER**.

23. Severability.

- A. All rights and restrictions contained in this **AGREEMENT** may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this **AGREEMENT** illegal, invalid or unenforceable.
- B. If any provision or portion of any provision of this **AGREEMENT** shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

24. Notices

- A. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below the parties' signatures.
- B. Either party may change its address or facsimile number for purposes of this **AGREEMENT** by notice in writing to the other party as provided herein. **Akatia Technologies** may give written notice to **USER** via electronic mail to the **USER's** electronic mail address as maintained in **Akatia Technologies'** billing records.

25. Waiver.

- A. No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy.



- B. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this AGREEMENT shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

26. Assignment; Successors.

- A. USER may not assign or transfer this AGREEMENT or any of its rights or obligations hereunder, without the prior written consent of Akatia Technologies.
- B. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever.
- C. *Akatia Technologies* may assign its rights and obligations under this AGREEMENT, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of USER.
- D. This AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.



27. Limitation of Actions.

- A. No action, regardless of form, arising by reason of or in connection with this **AGREEMENT** may be brought by either party more than one years after the cause of action has arisen.

28. Counterparts.

- A. If this **AGREEMENT** is signed manually, it may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- B. If this **AGREEMENT** is signed electronically, **Akatia Technologies'** records of such execution shall be presumed accurate unless proven otherwise.

29. Force Majeure.

- A. Neither party is liable for any default or delay in the performance of any of its obligations under this **AGREEMENT** (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

30. No Third-Party Beneficiaries.

- A. Except as otherwise expressly provided in this **AGREEMENT**, nothing in this **AGREEMENT** is intended, nor shall anything herein be construed to confer any rights, Terms of Service or equitable, in any Person other than the parties hereto and their respective successors and permitted assigns.
- B. Notwithstanding the foregoing, **USER** acknowledges and agrees that any supplier of third-party product or service that is identified as a third-party beneficiary in the Service Description, is an intended third-party beneficiary of the provisions set forth in this **AGREEMENT** as they relate specifically to its products or services and shall have the right to enforce directly the terms and conditions of this **AGREEMENT** with respect to its products or services against **USER** as if it were a party to this **AGREEMENT**.

31. Marketing.

- A. **USER** agrees that during the term of this **AGREEMENT** **Akatia Technologies** may publicly refer to the **USER**, orally and in writing, as a **USER** of Akatia Technologies.
- B. Any other public reference to **USER** by **Akatia Technologies** requires the written consent of **USER**.