v. 1.0

EULA online
XINK END USER LICENSE AGREEMENT

TERMS AND CONDITIONS OF USE

These terms and conditions constitute a legal agreement (the "Agreement") between ("**Client**") and XINK APS, a Danish corporation **("XINK")** regarding the XINK 's Products and related Services identified below, which include the software, application, parts, and any printed or "online" or literature (collectively referred to as "Product").

RECITALS

WHEREAS, XINK desires to grant to Client, and Client desires to accept from XINK, a license to use XINK's proprietary Products (as defined herein) upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, XINK and Client agree as follows:

1. **DEFINITIONS**

1.1 **"Authorized Representative"** means a person whose job title is that of Director or Manager Director at XINK or any person authorized by any of these to enter into contracts on behalf of XINK.

1.2 **"Client"** shall mean the Client, its employees, directors, successors, assignees, agents, and affiliates.

1.3 **"Products"** mean any products, including without limitation, (i) software, (ii) updates, releases, and versions of the software, (iii) any parts or components that support the software; and (iv) any printed and/or online literature that is sold by or provided by XINK.

1.4   By the term **"onsite"** is meant the product which is installed on-premise. By the term **"cloud"** is meant the product which works on the web site as a cloud solution.

1.5 "**Support Services"** means any services related to the Products supplied by XINK to the Client but shall not include design services.

1.6 **"Terms and Conditions"** shall mean, collectively, the terms and conditions set forth in this Agreement.

2. **LICENSE**

Grant of License. In consideration for the Client's continued timely payment of the license fee for the Products, XINK grants to Client a non-exclusive, non-transferable license (except as provided in Section 9.2 hereof) right to access, use, and display XINK 's Products. The license shall apply to all releases and versions of the Products so long as Client has paid the license fee then due and owing and is in compliance with the Terms and Conditions.

3. **FEES AND PAYMENTS**

3.1 **License Fees**.
Client shall pay to XINK a license fee for use of the Products. Support Services rendered by XINK are included in the license fee. The license fee will be paid within thirty (30) days from the date of client's receipt of completed Xink invoice.

3.2 **Taxes and Charges**.
Fees and other charges described in this Agreement do not include federal, state, or local sales, use property, excise, service, or similar taxes ("Taxes"). Client is solely responsible for payment of any taxes resulting from Client's acceptance of the Products and/or Services.

3.3 **Payments and Delivery.**
3.3.1 Payment may be made by bank transfer/wire, or credit card, which may be payable online.

3.3.2   When paying by credit card, the credit card is first authorized to generate a transaction
3.3.2.1 This is not a payment guarantee. The payment is deemed complete when the charge is drawn from the credit card account. All credit card transactions are executed by a merchant provider used by XINK.

Should Client fail to make a payment on any applicable Due Date, then without prejudice to any other right or remedy available to XINK, XINK shall be entitled to:
3.3.3.1 Suspend any further access to the Products.

3.3.3.2 appropriate any payment made by Client and re-direct such payment towards
the delinquent amount, as XINK deems fit; and/or

3.4 XINK has a license server which the application has access to. If a license fee, maintenance fee or service fee remains unpaid XINK can shut down the service and hence the Products will not work anymore. The usage of the products and services relies on the annual or monthly payment which is agreed by the parties.

3.4.1 Restoration of suspended access to the Products shall be effectuated promptly
upon client's payment of all amounts then due and owing.

4. **TERMS, TERMINATION AND SERVICE LEVEL.**

4.1 **Term**. This Agreement and the license granted hereunder shall become effective on the Effective Date and shall continue for one year or one month therefrom automatically.

4.2 Termination **without Cause**. Client may terminate this Agreement and the license granted hereunder by providing notice of termination at least thirty (30) days prior to the start of an Agreement. This termination is only valid if it is confirmed by XINK and Client has paid all fees then due and owing. Unless Client provides thirty (30) days prior written notice of termination, the Term will automatically extend into the next Subscription Period, and Client will remain responsible for paying all license fees in full. In the event of any termination hereunder, Client shall not be entitled to any refund of any payments made by Client.

4.3 **Termination with Cause**. This Agreement and the license granted hereunder shall terminate upon notice to one party (the "Breaching Party") by the other (the "Non-breaching Party") (i) if the Breaching Party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors; (ii) if the Breaching Party violates the Non-breaching Party's intellectual property and proprietary rights; (iii) if Client fails to pay the license fees or fees for Support Services when due and fails to cure such non-payment within thirty (30) days of written notice thereof; or (iv) thirty (30) days after the Non-breaching Party gives the Breaching Party notice of the Breaching Party's material breach of any provision of the Agreement and the Breaching Party has not cured such breach during such thirty (30) day period.

4.4 **Duties Upon Termination**. Upon any termination hereunder, Client shall immediately cease use of all XINK Products and shall irretrievably delete and/or remove the Products from all computer hardware and storage media. Client agrees that within thirty (30) days after receipt of a request by XINK, an officer of Client's organization shall certify in writing to XINK that it has performed the foregoing. In addition, Client understands and agrees that upon termination of this Agreement and the license hereunder for any reason, XINK shall have the right to suspend or terminate Client's account, including access by Client to all Products and Client agrees to remove all Products from its computer network server and system and provide XINK written confirmation once the Products have been removed.

4.5 **Support Services and Service Level**. XINK shall establish and maintain an organization and a process in order to provide support Software to the Client. Support shall include the diagnosis of problems or performance deficiencies of the Software and a resolution hereto. XINK shall provide software support all hours of the day all five everyday of a week (Monday through Friday) excluding public holidays or weekends. An email from XINK with acknowledgment of the Support request serves as verification and acknowledgment of the support request. All support requests should be created on support.xink.io before they can be acknowledged. An email sent to Xink or directly to a XINK representative does not function as a valid support request. A support request is only valid with a ticket number, which serves as confirmation. XINK shall use its best efforts to solve reported and reproducible errors in the Software.

4.6 The response time for support requests is 24 hours where the support request will be acknowledged. There are two types of support, 1) Product Support and 2) Design Service support. XINK guarantees that a support request regarding type 1) will be solved quickly if it is currently an available feature on the product, or, if it is a matter of incorrect setup, links to documentation will be provided quickly in order for the Client to be able to continue the setup or continued function of the product. Regarding support for type 2) XINK is unable to guarantee that a design looks exactly the same in all email programs and devices reading emails. XINK shall follow strict standards for email signature design coding but can never be held responsible for designs that look different.

4.7 XINK shall not be responsible for potential downtimes related to third-party services, such as Gmail and Office 365, Microsoft Azure or similar services that XINK integrates with.

5. **PROPRIETARY RIGHTS AND RESTRICTIONS**

5.1 Client acknowledges that ownership of and title in and to all intellectual property rights, including patent, trademark, service mark, copyright, and trade secret rights, in the Products and any related Services are and shall remain in XINK. Client acquires only the limited right to access and use the Products, and XINK shall have sole and exclusive ownership of all right, title and interest in and to the Products, and all modifications and enhancements thereof, subject only to the rights and privileges expressly granted to Client herein by XINK.

5.2 Client may not use, copy, modify or distribute the Products (electronically or otherwise) except as provided under the terms and conditions of this Agreement, or any copy, adaptation, transcription or merged portion thereof, except as expressly authorized by XINK. Client may not reverse assemble, reverse engineer, reverse compile or otherwise translate any Product. Client's rights may not be transferred, leased, assigned or sublicensed, except as expressly authorized by XINK. No time-sharing arrangement is permitted, except as expressly authorized by XINK.

5.3 In order to protect each party's proprietary information, each party agrees to take all reasonable steps and the same protective precautions to protect such proprietary information from disclosure to third parties as with its own proprietary and confidential information. Neither party shall, without the other party's prior written consent, disclose, provide, or make available any of the proprietary information of the other party in any form to any person, except to its bona fide employees, officers, or directors whose access is necessary to enable such party to exercise its rights hereunder and who are bound by enforceable confidentiality restrictions consistent with those set forth herein. Each party agrees that prior to disclosing any proprietary information of the other party to any third party, it will notify the other party and obtain from that third party a written acknowledgment that such third party will keep such information in the strictest confidence.

6. LIMITED WARRANTY

6.1 **Limited Warranty**. Subject to the limitations and conditions set forth herein, XINK warrants that commencing from the date of delivery to Client and continuing for a period of the shorter
of (a) sixty (60) days or (b) the warranty period (if any) expressly set forth as applicable specifically to Product in the warranty card or instructions accompanying the Product (if any): (a) the Product furnished will be free of major defects when used under normal conditions; and (b) the Products conform to the performance standards set forth XINK'S Product literature. This limited warranty extends only to Products purchased from XINK by the end-user Client.

6.2 **Scope of Warranty**. XINK does not warrant that the Products will operate uninterrupted, be compatible with Client's computer network, hardware and software, or that it will be free from minor defects or errors which do not materially affect such performance or that the applications contained in the Products are designed to meet all of Client's business requirements.

Express Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS AND THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS," AND XINK DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES NOT SET FORTH HEREIN WITH RESPECT TO THE PRODUCTS, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

7. LIMITED LIABILITY

7.1 **Client's Remedies**. In the event Client suffers any damages or loss in any way connected with the Products or any related Services furnished by XINK, whether due to XINK's negligence or breach of any other duty, XINK shall, in addition to Client's other remedies and at XINK's option: (i) bring the performance of the Products into compliance with the functional specifications; (ii) re-perform of Services; or (iii) return an appropriate portion of the fees paid by Client with respect to the applicable portion of the Products or Services, which under no circumstances shall exceed the total fees paid by Client, pursuant to those terms and conditions.

7.2 **XINK Not Responsible**. XINK will not be responsible under this Agreement for: (i) any alteration or modification of the Products by Client; or (ii) the correction of any defects resulting from modifications or extensions or as a result of misuse of the Products by Client; or (iii) the preparation or conversion of data into the form required for use with the Products; or (iv) the distortion or incompatibility of logos and other visual components of a signature that are created by external factors unrelated to the Products; or (v) any inaccurate or incorrect data originating from Client and/or other third-parties; or (vi) ensuring the security of Client's networked installation of the Products.

7.3 **Limitation of Liability**. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF THE PROPRIETARY INFORMATION OF THE OTHER PARTY, UNDER NO CIRCUMSTANCES SHALL XINK OR CLIENT BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of the Agreement allocate the risks between XINK and Client. The annual license fees reflect this allocation of risk and the limitations of liability herein.

8. **INDEMNIFICATION**

8.1 XINK shall indemnify Client against all third party claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim brought against Client by third parties alleging that Client's use of the Products infringes or misappropriates: (i) any issued and active United States patent; or (ii) a copyright; or (iii) trade secret rights, provided that, Client promptly notifies XINK in writing of any such claim and XINK is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on or admission of fault by Client. Client shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to XINK. XINK may, in its sole discretion, settle any such claim on a basis requiring XINK to substitute for the Products an alternative substantially equivalent non-infringing product. The purposes of this section do not apply for any Products that have been tampered or otherwise breached by Client.

8.2 Client shall defend, indemnify, and hold harmless XINK, its employees, directors, officers, shareholders, agents, attorneys, and representatives from any and all third party claims, demands, suits, or liability arising out of or in connection with gross negligence or willful misconduct (including the unauthorized use of the Products) of Client, its employees, affiliates, or sub-contractors, provided that XINK gives Client: (i) written notice of the claim within thirty (30) days of its notice thereof; (ii) to the extent necessary and appropriate, all requested information and assistance with respect to the claim at the indemnifying party's expense, and (iii) sole authority to defend and settle the claim.

9. MISCELLANEOUS

9.1 Relationship of the Parties. The relationship of each party to the other is that of an independent contractor and neither party nor its agents or employees shall be considered employees or agents of the other party. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between XINK and Client. Neither party shall have the right to bind the other to any obligations to third parties.

9.2 **Assignment**. This Agreement shall not be assignable or transferable by Client without the prior written consent of XINK, and any attempted assignment without such prior written consent shall be void. Notwithstanding the foregoing, Client may assign this Agreement to an affiliated entity, a successor in connection with a merger, acquisition or consolidation, or to the purchaser in connection with the stale of all or substantially all of its assets, without the prior consent of XINK.

9.3 **Applicable Law**. This Agreement shall be governed by and construed in accordance with the laws of Denmark, without regard to principles of conflicts of laws.

9.4 **Sublicense**. No sublicense agreement into which Client enters pursuant to this Agreement may extend beyond the term of this Agreement and shall terminate upon the termination of this Agreement.

9.5 **Modification, Amendment, Supplement, or Waiver**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral. No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and duly signed by all parties to this Agreement. This Agreement and any modification hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document (including any terms on any website, software or other click-through arrangement). A waiver by Client or XINK of any of the terms or conditions of this Agreement in any one instance shall not be deemed a waiver of such terms or conditions in the future.

9.6 **Agreement is Binding**. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, devisees, successors and assigns.

9.7 **Severability**. In the event that any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect and the affected provision shall be modified in a manner which comes closest to the intention of the parties at the time the original provision was agreed upon

9.8 **Headings**. Headings are for convenience only and shall not be considered in interpreting this Agreement

9.9 **Counterparts**. This Agreement may be signed by facsimile and in counterparts, each of which counterpart shall be deemed an original and all of which counterparts when taken together, shall constitute but one and the same instrument.

9.10 **Entire Agreement**. This Agreement and any official updates to the Terms and Conditions constitute the complete and exclusive statement of the agreement between XINK and Client,

and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. This Agreement may be modified only by a writing signed by both parties. This Agreement and any update hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Client to XINK unless otherwise

XINK APS   **Client**

By:_____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____