

SUBSCRIPTION AGREEMENT TERMS

THIS AGREEMENT (“AGREEMENT”) GOVERNS THE USE OF THE SOFTWARE AND SERVICES AS DEFINED HEREIN. THIS AGREEMENT IS BETWEEN DAIKIN COMFORT TECHNOLOGIES MANUFACTURING, L.P., A TEXAS LIMITED PARTNERSHIP (“DAIKIN”) AND A DAIKIN CONTRACTOR OR DISTRIBUTOR (“CUSTOMER”) WITH RESPECT TO CUSTOMER’S USE OF THE SOFTWARE AND SERVICES THAT ARE PROPRIETARY TO XOEYE TECHNOLOGIES, INC, DBA XOI TECHNOLOGIES (“XOI”) AND/OR ITS AFFILIATES OR SUBSIDIARIES, AS APPLICABLE.

1. Definitions

(a) “Access Credentials” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Services.

(b) “Affiliate” means, with respect to a party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such party, or one or more of the other Affiliates of that party (or a combination thereof). For purposes of this definition, “Control” or “Controlling” means the direct or indirect possession of the power to direct or to cause the direction of the management, operations, and policies of the entity whether by majority ownership, contract, the ability to appoint a majority of directors, or otherwise.

(c) “Customer Data” means any of Customer’s information, documents, or electronic files that are provided by or otherwise received from Customer or a User by or through the Services hereunder, including but not limited to all digital media and electronic files and related documentation and accessible via the Software. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Software by or on behalf of Customer or any User.

(d) “Customer Systems” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third party services.

(e) “Data Processing Terms” means XOI’s additional data processing terms, which are incorporated herein by reference.

(f) “Documentation” means user manuals, instructions, or functional specifications that describe the functionality of the Software and that are provided to Customer by XOI in any form or medium, and any updates of the foregoing.

(g) “Error” means any reproducible material failure of the Software to function in accordance with its Documentation.

(h) “Intellectual Property” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(i) “Order” means the point-of-sale process which dictates the license of specific Software and Services which includes all relevant commercial terms, including the duration of the Term.

(j) “Personal Information” means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

(k) “Provider Personnel” means all individuals involved in the performance of Services as employees, agents, or independent contractors of XOI or any subcontractor.

(l) “Representatives” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

(m) “Resultant Data” means (a) data and information related to Customer’s and any User’s use of the Software that is used by XOI in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Software, and (b) de-identified Customer Data.

(n) “Software” means XOI’s proprietary cloud-hosted software that allows Customer to manage Users and to capture and organize Customer Data, each provided as a hosted service hereunder, including any associated mobile applications and any related development tools/kits, modifications, corrections, enhancements or Updates relating thereto that may be provided hereunder or thereunder, and any derivative works of the foregoing.

(o) “Service Period Date” means the date that Customer registers to use the Services and accepts these terms.

(p) “Services” means the implementation, support, training, and any other service provided by XOI hereunder, including the hosting, management and operation of the Software for remote electronic access and use by the Customer and its Users.

(q) “Support” means the support services described in Section 3 below.

(r) “Third-Party Materials” means any content, product, tool, Service or software supplied or licensed to XOI by third parties and made available as part of the Software or Services.

(s) “Update” means any patch, bug fix, release, version, modification, or successor to the Software.

(t) “User” means a named employee, consultant, contractor, or agent whom Customer has authorized to access and use the Software on Customer’s behalf under this Agreement, regardless of whether or not the User actually uses the Software and for whom access to the Software has been purchased under this Agreement. The total number of Users is indicated on the Order, which is incorporated herein by reference.

(u) “XOI Materials” means the Software, Services, Documentation, and all other information, data, documents, all devices, documents, data, know-how, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional

descriptions, requirements, plans, or reports, that are provided or used by XOi or any subcontractor in connection with the Software, Services or otherwise comprise or relate to the Software or Services. For the avoidance of doubt, XOi Materials include Resultant Data and any information, data, or other content derived from XOi's monitoring of Customer's and User's access to or use of the Services, but do not include Customer Data.

2. Service

(a) License Grant. During the Term and subject to the use restrictions set forth in Section 2(c) below, XOi hereby grants to Customer a non-cancellable, non-refundable, non-exclusive, non-transferable (except in compliance with Section 9(f)), non-sublicensable right and license to (i) access and use the Software in object code form for its internal business purposes solely in accordance with the Documentation and the terms and conditions herein, and solely for use by Users; and (ii) use the Documentation solely for Customer's internal business purposes in connection with its use of the Services. All rights in and to the Software not expressly granted herein are reserved to XOi. XOi shall provide to Customer the Access Credentials as of the Service Period Date. The total number of Users will not exceed the number set forth in the Order, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the fees payable hereunder. For the avoidance of doubt, the scope and functionality of the Services is limited as set forth on Exhibit A attached hereto (the "Usage Scope"). Customer acknowledges that XOi is solely responsible for the Services hereunder, and Customer agrees to look solely to XOi for performance of the Services and associated contract obligations and liabilities hereunder. Accordingly, Customer agrees to release, waive, and discharge Daikin and all of its affiliates, and its and their respective governing boards, officers, directors, principals, trustees, legal representatives, members, owners, employees, agents, administrators, and assigns, from any and all claims, demands, suits, causes of action, judgments, damages, expenses, actions and liabilities of every name and nature whatsoever, whenever occurring, whether known or unknown, contingent or fixed, at law or in equity, at any time arising from or in connection with this Agreement.

(b) Additional Services. To the extent XOi agrees to provide Services not specified herein or pursuant to a separate written service change form, Customer shall pay XOi its then current fees, plus expenses, for such Services. For clarification, XOi does not have an obligation to provide any Service or make any change to the scope of Services except as agreed in writing by XOi. XOi reserves the right, in its sole discretion, to make any changes to the Software, the Services, and XOi Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of XOi's services to its customers, (ii) the competitive strength of or market for XOi's services, or (iii) the Software's or the Services' cost efficiency or performance; or (b) to comply with applicable law.

(c) Use Restrictions. Except as this Agreement expressly permits, Customer shall not, directly, indirectly, alone, or with another party, and shall not permit another party to:

- (i) copy, modify, or create derivative works or improvements of the Software, Services, Third-Party Materials, or XOi Materials;
- (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, any Services, Third-Party Materials, or XOi Materials to any another party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, Third-Party Materials, or XOi Materials, in whole or in part;
- (iv) bypass or breach any security device or protection used by the Software, Third-Party Materials, or XOi Materials, or access or use the Software, XOi Materials, or Third-Party Materials other than by a User through the use of his or her own then valid Access Credentials;
- (v) input, upload, transmit, or otherwise provide to or through the Software, Services, Third-Party Materials, or XOi Materials, any information or materials that are unlawful or injurious, or contain, transmit, or activate any virus, bug, Trojan horse, worm, backdoor, or other harmful or malicious computer code and any time bomb or drop dead device;
- (vi) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Software, Third-Party Materials, or XOi's provision of services to any third party, in whole or in part;
- (vii) remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services, Third-Party Materials, or XOi Materials, including any copy thereof;
- (viii) access or use the Software, Services, Third-Party Materials, or XOi Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property right or other right of any third party, including without limitation invasion of privacy, or that violates any applicable law;
- (ix) use the Software, Services, Third-Party Materials, or XOi Materials in connection with any illegal or unlawful activity or in a manner that causes, results in, encourages, solicits, or publicizes a crime or illegal or unlawful activity;
- (x) access or use the Software, Third-Party Materials, or XOi Materials for purposes of competitive analysis of the Software, Third-Party Materials, or XOi Materials, the development, provision, or use of a competing software service or product or any other purpose that is to XOi's detriment or commercial disadvantage; and
- (xi) otherwise access or use the Software, Third-Party Materials, or XOi Materials beyond the scope of the authorization granted under this Section 2.

If Customer becomes aware of any actual or threatened activity prohibited by this Section 2(c), Customer shall, and shall cause its Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software, Third-Party Materials, and XOi Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify XOi of any such actual or threatened activity.

(d) Daikin Ownership of Customer Data. Except for Non-Daikin Workflow Data, Customer agrees that Daikin owns all right, title and interest in the Customer Data. Notwithstanding the foregoing, Daikin grants a limited, term-based right to the Customer to access and use the Customer Data subject to the Usage Scope. “Non-Daikin Workflow Data” means Customer Data that is produced from workflows that are not furnished by or for Daikin. Customer will own the Non-Daikin Workflow Data and Daikin will not have access to Non-Daikin Workflow Data.

(e) XOi Materials. All right, title, and interest in and to the XOi Materials, including all Intellectual Property rights therein, are and will remain with XOi and, with respect to Third-Party Materials, the applicable third party providers own all right, title, and interest, including all Intellectual Property rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the XOi Materials except as expressly set forth in this Agreement. All other rights in and to the XOi Materials are expressly reserved by XOi.

(f) Prohibited Data. Customer acknowledges that the Services are not designed with security and access management for processing the following categories of information: (a) nonpublic personal information as defined under the Gramm-Leach-Bliley Act, and protected health information as defined under the Health and Insurance Portability and Accountability Act of 1996; (b) data that is classified and or used on the U.S. Munitions list, including software and technical data; (c) articles, services, and related technical data designated as defense articles or defense services; and (d) ITAR (International Traffic in Arms Regulations) related data, (each of the foregoing, “Prohibited Data”). Customer shall not, and shall not permit any User to, provide any Prohibited Data to, or process any Prohibited Data through, the Software, the XOi systems, or any Provider Personnel. Customer is solely responsible for reviewing all Customer Data and shall ensure that no Customer Data constitutes or contains any Prohibited Data.

(g) Data Storage. Customer acknowledges that it has a designated level of data storage that is accessible for thirty (30) days after its initial use. Customer agrees that XOi has no obligation to permit Customer to exceed its then-current designated level of data storage, unless otherwise agreed to in writing by the parties.

(h) Password Security. Customer is solely responsible for maintaining the security of all Access Credentials, including, without limitation, user names and passwords granted to it, for the security of its information systems used to access the Services, and for its Users’ compliance with the terms of this Agreement. XOi has the right at any time to terminate or suspend access to any User or Customer if XOi reasonably believes that such termination or suspension is necessary to preserve the security, integrity, or accessibility of any portion of the Software, or XOi’s other customers. Customer shall notify XOi as soon as reasonably possible of any known unauthorized access to the Software or Services.

(i) Acceptable Use and Suspension or Termination of Services. Customer shall use the Services and Software only for lawful purposes and in compliance with this Agreement and all applicable laws. Customer is responsible for all use of the Software and Services by its Users, regardless of whether such use is known to or authorized by Customer. XOi may, directly or indirectly suspend, terminate, or otherwise deny Customer’s, any User’s, or another’s access to or use of all or any part of the Software or XOi Materials, without incurring any resulting obligation or liability, if: (a) XOi receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires XOi to do so; or (b) XOi believes, in its good faith and reasonable discretion, that: (i) Customer or any User has failed to comply with any material term of this Agreement, or accessed or used the Software beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) Customer or any User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with the Software or any of the Services; or (iii) this Agreement expires or is terminated. This Section does not limit any of XOi’s other rights or remedies, whether at law, in equity, or under this Agreement.

(j) Reservation of Rights. Subject to the limited rights expressly granted under this Agreement, nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property rights in or relating to, the Software, the Services, or XOi Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Software, the Services, and the XOi Materials are and will remain with XOi and the respective rights holders in the Third-Party Materials.

3. Support

(a) Updates. XOi shall deliver to Customer any Updates at no charge unless the Update includes new optional components or functionality for which additional charges apply.

(b) Customer Systems. Except as otherwise expressly provided in this Agreement, as between the parties, Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the XOi Materials by another, by or through the Customer Systems or any other means controlled by Customer or any User, including any: (i) information, instructions, or materials provided by any of them to XOi; (ii) results obtained from any use of the Software or XOi Materials; and (iii) conclusions, decisions, or actions based on such use. Customer shall provide all cooperation and assistance as XOi may reasonably request to enable XOi to exercise its rights and perform its obligations under and in connection with this Agreement.

(c) Error Correction. XOi shall use commercially reasonable efforts to correct all material Errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during XOi’s normal business hours. Customer shall provide written notice to XOi of any material Error and shall provide such access, information, and support as XOi may reasonably require in the process of resolving any such material Error. If XOi is unable to correct or provide a reasonably acceptable workaround for a material Error within sixty (60) days of Customer first written reporting of the material Error, then Customer may, at its option, elect to suspend any payments owed to XOi under this Agreement until such time as XOi has correct or provided a reasonably acceptable workaround for that material Error. A material Error is an Error in the Software that causes any of the core functions of the Software to be inaccessible or non-functional. A copy of XOi’s “Service Level Agreement” is incorporated herein by reference.

(d) Support Exclusions. XOi is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by:

- (i) the acts, omissions, negligence, or willful misconduct of Customer or any User, including any unauthorized modifications of the Software or its operating environment;

(ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of XO's firewall);

(iii) Customer's or any User's use of the Software other than in accordance with the Documentation.

(e) Limitation of Remedies. Correction of Errors as defined in this Agreement is Customer's sole remedies for any Errors in the Service.

4. Term and Termination

(a) Term. The term of this Agreement commences on the Service Period Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect for a period of twelve (12) months from such date (the "Term").

(b) Termination for Cause. XO or Daikin may terminate this Agreement for cause upon written notice to the Customer:

(i) effective on written notice to Customer upon any breach by Customer of its obligations under Section 2(c) (Use Restrictions) or Section 5 (Confidentiality); or

(ii) if the Customer has committed any material breach of its obligations under this Agreement and has failed to cure such breach within thirty (30) days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in good faith to cure such breach).

(c) Termination for Insolvency. Either party may terminate this Agreement, effective immediately upon written notice to the other party, upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within thirty (30) days of commencement.

(d) Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(i) XO shall immediately discontinue providing Services and terminate access to the Software, Services, Third-Party Materials, and XO Materials by Customer and its Users;

(ii) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(iii) XO shall (i) promptly return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer's Confidential Information; and (ii) permanently erase Customer's Confidential Information from all systems XO directly or indirectly controls;

(iv) Customer shall immediately cease all use of Software, any Services, or XO Materials and (A) promptly return to XO, or at XO's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any XO Materials or XO's Confidential Information; (B) permanently erase all XO Materials and XO's Confidential Information from all systems Customer directly or indirectly controls; and (C) certify to XO in a signed written instrument that it has complied with the requirements of this Section.

5. Confidentiality

(a) Definition of Confidential Information. "Confidential Information" means any and all tangible and intangible information (whether written, electronic, or otherwise recorded, or oral) of a party that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (ii) the disclosing party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (A) nonpublic information relating to a party's technology, trade secrets, know-how, customers, business operations, plans, strategies, promotional and marketing activities, finances and other business affairs; (B) third-party information that a party is obligated to keep confidential; and (C) any nonpublic information relating to any activities conducted hereunder.

(b) Exclusions. Notwithstanding the above, the term "Confidential Information" does not include any information that:

(i) readily discernible from publicly-available products or literature;

(ii) approved for disclosure by prior written permission of an executive officer of the disclosing party; or

(iii) the receiving party can demonstrate by written or other documentary records: (A) was rightfully known to the receiving party without restriction on use or disclosure prior to such information's being disclosed or made available to the receiving party in connection with this Agreement; (B) was or becomes generally known by the public other than by the receiving party's or any of its Representatives' noncompliance with this Agreement; (C) was or is received by the receiving party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (D) the receiving party can demonstrate by written or other documentary records was or is independently developed by the receiving party without reference to or use of any Confidential Information.

(c) Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the receiving party shall:

(i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(ii) except as may be permitted by and subject to its compliance with Section 6(d), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the receiving party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature

of the Confidential Information and the receiving party's obligations under this Section 6(c); and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 6;

(iii) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; and

(iv) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 6.

(d) Required Disclosures. A receiving party or any of its Representatives may disclose Confidential Information of the disclosing party as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice, prior to such disclosure, to allow it to seek a protective order or other appropriate remedy (except to the extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement); (ii) discloses only such information as is required by the governmental entity or otherwise required by law; and (iii) and uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.

(e) Return of Information. If a disclosing party so requests at any time, the receiving party shall return promptly all copies, extracts, or other reproductions in whole or in part of the Confidential Information in its possession.

(f) Survival. The parties hereto covenant and agree that this Section 6 will survive the expiration, termination, or cancellation of this Agreement for a period of three (3) years, except for Confidential Information constituting a trade secret, with respect to which this Section will survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

(g) Customer Data. The parties agree that Daikin will not be subject to any confidentiality restrictions with regard to the Customer Data.

6. Indemnification

(a) Indemnification. Customer shall indemnify Daikin and Daikin's Representatives, and each of its and their respective stockholders, officers, directors, agents, employees, successors, and permitted assigns (each, an "Indemnified Party") at all times from and after the Service Period Date against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including reasonable legal expenses, resulting from any claim by an unaffiliated third party (each a "Third Party Claim") that arise out of or result from, or are alleged to arise out of or result from: (a) the Customer Data, (b) Customer's breach of this Agreement, or (c) the gross negligence or willful misconduct of Customer, any User, or any third party on behalf of Customer or any User, in connection with this Agreement.

(b) Mediation. Notwithstanding the foregoing, if the Software becomes the subject of such a claim of infringement or if XOi reasonably believes the Software may infringe or misappropriate, then XOi may in its sole discretion: (i) procure for Customer the right to use the Software free of any liability for infringement; (ii) replace or modify the Software to make it non-infringing but with reasonably comparable functionality; or (iii) if XOi determines that the previous two options are not available on a commercially reasonable basis, terminate Customer's use of the Software and grant to Customer a credit for the unused portion of any prepaid fees and refund any deposits paid by Customer for the affected Software. The alternatives listed in this Section 7(b) are the Customer's sole and exclusive remedies.

(c) Exclusion. For the avoidance of doubt, XOi has no liability for, and no obligation to indemnify Customer against, any Third Party Claim arising or alleging based in whole or in part on (i) use of the Software other than as specified in this Agreement or its Documentation, including use with third party hardware and software products not specifically authorized by XOi, or (ii) Customer's failure or alleged failure to obtain any necessary consent, release, license, or approval from a third party in connection with Customer's or its Users' use of the Software, Services, or XO Materials.

(d) Indemnification Process. The Indemnified Party shall promptly notify the indemnifying party in writing of any Third Party Claim for which such party believes it is entitled to be indemnified pursuant to Section 7(a)(i) or Section 7(a)(ii), stating the nature and basis of the Third Party Claim, to the extent known. The Indemnified Party shall cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall promptly assume control of the defense and shall employ counsel to handle and defend the same, at the indemnifying party's sole cost and expense. The Indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The foregoing notwithstanding, the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel at its own expense to assist in the handling of such claim, except that the Indemnified Party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (x) the indemnifying party fails or refuses to assume control over the defense of the Third Party Claim; or (y) the Indemnified Party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it. The indemnifying party shall not settle any Third Party Claim without the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party's failure to perform any obligations under this Section will not relieve the indemnifying party of its obligations under this Section, except to the extent that the indemnifying party can demonstrate that it has been prejudiced as a result of such failure.

(e) This Section 7 sets forth XOi's sole obligation and liability, and Customer's exclusive remedies, with respect to any Third Party Claim described therein.

7. Warranties; Disclaimers and Limitations

(b) Mutual Warranties. Customer represents and warrants that:

(i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;

(ii) any individual executing the Agreement on its behalf is duly authorized and empowered to execute and deliver the Agreement;

(iii) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms; and

(iv) it has the full legal right and corporate power and authority to enter into and perform all of its obligations under the Agreement, and to comply with all terms and conditions thereof.

(c) Additional Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants that it does not and will not infringe, misappropriate, or otherwise violate any Intellectual Property rights, or any privacy or other rights of any third party or violate any applicable law. To the extent Customer utilizes any equipment or devices with audio and visual recording capabilities in connection with use of the Software, Services, or XO_i Materials, Customer agrees to fully and conspicuously notify its Users, personnel, employees, customers, and any other person of this fact by legible signs and other necessary communications, including without limitation obtaining any necessary consent, approval, or release for the use or reproduction of a person's name, likeness, voice, conversation, sounds, approved biographical data, or other material. Customer shall be solely responsible for ensuring that the use of the equipment and devices contemplated herein complies at all times with all applicable federal, state, and local laws, rules, and regulations.

(d) DISCLAIMER OF WARRANTIES. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SOFTWARE, SERVICES, THIRD-PARTY MATERIALS, AND XO_i MATERIALS ARE PROVIDED "AS IS," BOTH XO_i AND DAIKIN HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, THE SERVICES, THE XO_i MATERIALS OR THIRD-PARTY MATERIALS PROVIDED, OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE, OR RESULTS OF USE OF THE SOFTWARE, SERVICES, THIRD-PARTY MATERIALS, OR XO_i MATERIALS. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, BOTH XO_i AND DAIKIN DISCLAIM ANY AND ALL WARRANTIES THAT THE SOFTWARE, THE SERVICES, THIRD-PARTY MATERIALS, THE XO_i MATERIALS PROVIDED BY XO_i, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF ARE OR WILL BE ACCURATE, ERROR-FREE, OR UNINTERRUPTED, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, OR FREE OF HARMFUL CODE. NEITHER XO_i NOR DAIKIN MAKE ANY, AND HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. BOTH XO_i AND DAIKIN EXPRESSLY DISCLAIM ANY AND ALL LIABILITY RELATED TO THE USE OR TRANSMISSION OF CUSTOMER DATA THROUGH THE SOFTWARE, SERVICES, AND XO_i MATERIALS BY CUSTOMER OR USERS.

(e) EXCLUSION OF DAMAGES. NEITHER XO_i NOR DAIKIN HAS ANY LIABILITY WITH RESPECT TO THE SOFTWARE, SERVICES, THIRD-PARTY MATERIALS, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR ANY LOST PROFITS OR REVENUES OR FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF DATA, AND THE COST OF COVER) HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF XO_i OR DAIKIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(f) LIMITATIONS OF LIABILITY. EXCEPT FOR (i) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (ii) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 7, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF EITHER PARTY AND EITHER PARTY'S LICENSORS, SERVICE PROVIDERS, AND SUBCONTRACTORS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID OR PAYABLE IN CONNECTION WITH THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

8. General Provisions

(b) Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

(c) Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Non-performing Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Non-performing Party, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation, and (c) the Non-performing Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and insufficiency of funds. If a Force Majeure Event occurs, the Non-performing Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Non-performing Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Non-performing Party shall immediately resume performance under this Agreement. Both parties shall work cooperatively to minimize any delays related to any Force Majeure Event. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

(d) Notices. Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 5th day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

(e) Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Daikin's prior written consent. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

(f) Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(g) Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(h) Governing Law; Venue. The laws of the State of Tennessee (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Davidson County, Tennessee, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement.

(i) Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

(j) Entire Agreement. This Agreement, together with any Orders, Exhibits, and any other documents incorporated herein by reference, constitutes the sole and entire agreement between the parties with respect to the subject matter contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement.

(k) Survival of Certain Provisions. Each party hereto covenants and agrees that any provision that, by its nature, should survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.

EXHIBIT A: EXPERIENCE AND FUNCTIONALITY

- User level access for mobile and desktop applications for users, including:
 - Pre-defined workflows provided by Daikin and XOi
 - Daikin Knowledge Base
 - Push notifications
 - Service history
 - Live support with Daikin personnel
 - Vision Live access
 - Basic dashboard reports