



## **TERMS OF SERVICE**

Effective Date: April 1, 2015

**PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE SERVICE.**

### **Introduction and Overview**

**To print our full Privacy Policy, click [here](#) . To print our full Video Privacy Policy and Consent, click [here](#). To print our full Terms of Service, click [here](#). To receive copies of all three both documents e-mail [privacy@xumo.com](mailto:privacy@xumo.com). To review the full Terms, keep reading.**

Welcome! You have arrived at [www.xumo.com](http://www.xumo.com) or a Xumo App and/or are otherwise interacting with our Service, which is owned and operated by Xumo, LLC (“**Xumo**,” “**Company**,” “**we**,” “**our**,” or “**us**”). These Terms govern the use of any online service location (*e.g.*, website or mobile app) that posts a link to these Terms (each a “**Site**,” unless reference is only to an application in which case an “**App**”). It also applies to the use of all features, widgets, plug-ins, applications, content, downloads and/or other services that (i) we own and control and make available through a Site, and/or (ii) that post or link to these Terms (collectively, with the Site, the “**Service**”), regardless of how you access or use it, whether via television, computer, mobile device or otherwise (“**Device**”). By using the Service, you acknowledge and accept the Service’s **Privacy Policy** and **Video Privacy Policy and Consent** and consent to the collection and use of data in accordance therewith. By using the Service, you further agree that we may change, alter, or modify the settings or configurations on your Device. By interacting with and/or using the Service, you signify your assent and agreement to these Terms. **If you do not agree to these Terms, you must not use the Service.**

You should read these entire Terms; but here is a partial list of some of the terms that we want to bring to your initial attention. Capitalized terms have the meanings given to them where defined in these Terms.

- Each time you use the Service, the Terms, and any applicable Additional Terms (defined below), then posted apply (subject to **Section 12**), so you should check back each time you return for any updates.
- Click **here** for a summary of each section of these Terms. You may click on the topic heading or the “**More**” button for full details.
- You may only use the Content (defined below) on the Service in connection with your permitted activities on the Service and not in an offline environment or in connection with another site or service. (**Section 1** and **Section 3**). You grant us a broad license to content you submit or post. (**Section 2**)

- You consent to our **Privacy Policy** and **Video Privacy Policy and Consent** and our practices detailed in them, including tracking your viewing and activities to help us recommend other content to you and send interest-based advertising.
- As permitted by law, many types of disputes that may arise in connection with your access to and use of the Service are subject to mandatory arbitration – which includes your waiver of a right to a jury trial and to class action relief. (**Section 8**)
- We are providing the Service to you on an “as-is” basis, without any warranty of any kind, and our liability to you in connection with your use of the Service is very limited. Many other limitations and disclaimers relate to your use of the Service. (**Section 11**)

### **If You Want to Use This Service,**

then carefully read these entire Terms, as they constitute a written agreement between you and us and they affect your legal rights and obligations. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms. You represent you are the age of majority in your jurisdiction of residence, or you are using the registered account of your parent or guardian with permission and involvement. Users must be thirteen (13) years of age or older even to use a parent’s account. You agree to be responsible for any person you permit to use your account and represent that you have the authority to bind them to these Terms. You will ensure they comply with and do not dispute the application of these Terms to them, and will indemnify and hold us harmless from and against any claims related to the use of the Service on your Device or use of your Account by any other person.

Each time you access and/or use the Service (other than to simply read these Terms), you agree to be bound by and comply with these Terms and any applicable Additional Terms then posted (subject to **Section 12**). Therefore, ***do not use the Service if you do not agree.*** Without the conditions that are set forth in these Terms – such as your grants and waivers of rights, the limitations on our liability, your indemnity of us, and our arbitration of certain disputes – we would not make the Service available to you.

In some instances, both these Terms and separate guidelines, rules, or terms of service or sale setting forth additional or different terms and/or conditions will apply to your use of the Service or to a service or product offered via the Service (in each such instance, and collectively “**Additional Terms**”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise. Please also review the Service’s **Privacy Policy** and **Video Privacy Policy and Consent**, to which you hereby consent.

### **Full Details of Terms of Service**

#### **1. SERVICE CONTENT, OWNERSHIP, LIMITED LICENSE, AND RIGHTS OF OTHERS**

**A. Content.** The Service contains a variety of: (i) materials and other items relating to Xumo, and our licensors and other third parties, including all layout, information, articles, posts, text, data, files, images, scripts, designs, graphics, button icons, instructions, illustrations, photographs, audio clips, music, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Service, and the compilation, assembly, and arrangement of the materials of the Service and any and all copyrightable material (including source and object code); (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Xumo (collectively, “**Trademarks**”); and (iii) other forms of intellectual property (all of the foregoing, collectively “**Content**”).

**B. Ownership.** The Service (including past, present, and future versions) and the Content are owned or controlled by Xumo and our licensors and certain other third parties. All right, title, and interest in and to the Content available via the Service is the property of Xumo or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. Xumo owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

**C. Limited License.** Subject to your strict compliance with these Terms and the Additional Terms, we grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to (i) display, view, use, play the Content on via our App pre-installed by the manufacturer on a Television-enabled Device (or otherwise installed in a manner we have approved) (“TVApp”); and (ii) with respect to our web site(s), and to the extent we offer a version of our Service of personal computers or mobile devices, download and copy (temporary storage only of web site and a single Device download and storage of the Apps), display, view, use, play the Content on a personal computer, mobile phone or other wireless Device, or other Internet-enabled Device (in each case of (i) and (ii) for your personal, non-commercial use only. The foregoing limited license (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be immediately suspended or terminated for any reason, in our sole discretion, and without advance notice or liability. In some instances, we may permit you to have greater access to and use of Content, subject to certain Additional Terms.

**D. Rights of Others.** In using the Service, you must respect the intellectual property and other rights of Xumo and others. Your unauthorized use of Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability.

**E. Reservation of All Rights Not Granted As To Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to Content and to use and access the Service. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by Xumo and its licensors and other third parties. *Any unauthorized use of any Content or the Service for any purpose is prohibited.*

## **2. SERVICE AND CONTENT USE RESTRICTIONS**

**A. Service Use Restrictions.** You agree that you will not: (i) aside from your purchase of goods or services offered for sale by Xumo or its affiliates, use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Trademarks; (iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to Xumo; (iv) to the maximum extent permitted by applicable law, reverse engineer, decompile, disassemble, reverse assemble, or modify any Service source or object code or any software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user’s access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, Xumo, or other users of the Service; (vi) interfere with or circumvent any security feature of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including e-mail addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.

**B. Content Use Restrictions.** You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other intellectual property notices contained in such Content; (iv) will not use such Content in a manner that suggests an unauthorized association with any of our or our licensors’ products, services, or brands; (v) will not make any modifications to such Content; (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an officer of Xumo or, in the case of Content from a licensor, the owner of the Content; and (vii) will not insert any code or product to manipulate such Content in any way that adversely affects any user experience.

**C. Availability of Service and Content.** We may immediately suspend or terminate the availability of the Service and Content (and any elements and features of them), in whole or in part, for any reason, in our sole discretion, and without advance notice or liability.

**D. Reservation of All Rights Not Granted as to Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to make use of Content and to use and access the Service. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by Xumo, our licensors and other third parties. *Any unauthorized use of any Content or the Service for any purpose is prohibited.*

### **3. ACCOUNTS**

In order to access or use some (or potentially all) of the features on the Service, you must first register through our online registration process, such as when you first enable an App. The Service’s practices governing any resulting collection use, disclosure and management of your personal information are disclosed in its **Privacy Policy** and **Video Privacy Policy and Consent**, to which you consent on behalf of any user of your Account. If you are under the age of thirteen (13), then you are not permitted to register as a user, or otherwise use the Service or submit personal information to us. Registered users must be the age of majority and are responsible for anyone using their Account as set forth above. If we permit multiple users under an Account, the master Account holder is still responsible of all other users under the Account, but the other users are also bound by these Terms and consent to our **Privacy Policy** and **Video Privacy Policy and Consent**.

If you register for any feature that requires a password and/or username, then you will select your own password at the time of registration (or we may send you an e-mail notification with a randomly generated initial password) and you agree that: (i) You will not use a username (or e-mail address) that is already being used by someone else, may impersonate another person, belongs to another person, violates the intellectual property or other right of any person or entity, or is offensive. We may reject the use of any password, username, or e-mail address for any other reason in our sole discretion; (ii) You will provide true, accurate, current, and complete registration information about yourself in connection with the registration process and, as permitted, to maintain and update it continuously and promptly to keep it accurate, current, and complete; (iii) You are solely responsible for all activities that occur under your account, password, and username – whether or not you authorized the activity; (iv) You are solely responsible for maintaining the confidentiality of your password and for restricting access so that others may not access any password protected portion of the Service using your name, username, or password; (v) You will immediately notify us of any unauthorized use of your account,

password, or username, or any other breach of security; and (vi) You will not sell, transfer, or assign your account or any account rights.

We will not be liable for any loss or damage (of any kind and under any legal theory) to you or any third party arising from your inability or failure for any reason to comply with any of the foregoing obligations.

If any information that you provide, or if we have reasonable grounds to suspect that any information that you provide, is false, inaccurate, outdated, incomplete, or violates these Terms, any applicable Additional Terms, or any applicable law, then we may suspend or terminate your account. We also reserve the more general and broad right to terminate your account or suspend or otherwise deny you access to it or its benefits – all in our sole discretion, for any reason, and without advance notice or liability.

#### **4. PRODUCTS AND SERVICES**

**A.** Consult applicable Additional Terms regarding each product or service, including terms of sale, return and delivery. We do our best to describe every product or service offered on this Service as accurately as possible. However, we are human, and therefore we do not warrant that specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. In the event of any errors relating to the pricing or specifications, we have the right to refuse or cancel any orders in our sole discretion. If we charged your credit card or other account prior to cancellation, we will issue a credit to your account in the amount of the charge.

#### **5. NOTICES, QUESTIONS AND CUSTOMER SERVICE**

You agree that: (1) we may give you notices of new, revised or changed terms and other important matters by prominently posting notice on the home page of the Service, or in another reasonable manner; and (2) we may contact you by mail or e-mail sent to the address provided by you. You agree to promptly notify us if you change your e-mail or mailing address by updating your Account settings. All legal notices to us must be sent to Xumo, 4 Park Plaza, Suite 1500, Irvine CA 92614 (attn.: Legal).

If you have a question regarding using the Service, you may contact Xumo Customer Support by sending an e-mail [info@xumo.com](mailto:info@xumo.com). You acknowledge that the provision of customer support is at Xumo's sole discretion and that we have no obligation to provide you with customer support of any kind. We may provide you with customer support from time to time, at our sole discretion.

#### **6. THIRD-PARTY SITES; ADVERTISEMENTS; DEALINGS WITH THIRD PARTIES**

**A. Third-Party Content and Sites; Advertisements.** The Service enables you to watch third party content and based on your viewing and other activities we are able to offer you recommendations on other content you may like and to send you ads that seem more relevant to your interests. We are not responsible for these third parties, their content, their ads, their data collection practices or their acts or omissions. The Service may also contain third party plug-ins, applications, ads, tools and/or other content, and/or links to third-party websites, applications, platforms and other services that are not owned, controlled or operated by Xumo (collectively, “**Third-Party Sites**”), including services operated by advertisers, licensors, licensees, and certain other third parties who may have business relationships with Xumo. This may include the ability to register or sign in to our Services using Facebook Connect or other third party tools, and to post content on third party sites and services using their plug-ins or other technology made available on our Services. We may also host our content, apps and tools on Third-Party Sites. Xumo may have no control over the content, operations, policies, terms, or other elements of Third-Party Sites, and does not assume any obligation to review any Third-Party Sites. Xumo does not necessarily endorse, approve, or sponsor any such third party, or any third-party content,

advertising, information, materials, products, services, or other items. Furthermore, we are not responsible for the quality or delivery of the products or services offered, accessed, obtained by or advertised by third parties. Finally, you agree that we will under no circumstances be liable for any direct, indirect, incidental or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, caused by the exhibition, distribution or exploitation of any information or content contained within these Third Party Sites. Any activities you engage in connection with any of the same are subject to the privacy and other policies, terms and conditions of use and/or sale, and rules issued by the operator of the Third Party Site. XUMO DISCLAIMS ALL LIABILITY IN CONNECTION THEREWITH.

**B. Dealings with Third Parties.** Any interactions, correspondence, transactions, and other dealings that you have with any third parties found on or through the Service (including on or via Third-Party Sites or advertisements) are solely between you and the third party (including issues related to the content of third-party advertisements, payments, delivery of goods, warranties (including product warranties), privacy and data security, and the like). Xumo disclaims all liability in connection therewith.

## **7. WIRELESS AND LOCATION-BASED FEATURES**

**A. Wireless Features.** The Service may offer certain features and services that are available to you via your wireless Device. These features and services may include the ability to access the Service's features and upload content to the Service, receive messages from the Service, and download applications to your wireless Device (collectively, "**Wireless Features**"). Standard messaging, data, and other fees may be charged by your carrier to participate in Wireless Features, for which you are responsible. Fees and charges may appear on your wireless bill or be deducted from your pre-paid balance. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. You should check with your carrier to find out what plans are available and how much they cost. Contact your carrier with questions regarding these issues.

**B. Terms of Wireless Features.** You agree that as to the Wireless Features for which you are registered for, we may send communications via such features or apps to your wireless Device regarding us or other parties. Further, we may collect information related to your use of the Wireless Features. If you have registered via the Service for Wireless Features, then you agree to notify Xumo of any changes to your wireless contact information (including phone number) and update your accounts on the Service to reflect the changes.

**C. Location-Based Features.** You acknowledge that when you use our Service your Device location may be identified and may be shared with us and others consistent with the **Privacy Policy**. Some mobile app(s), platforms and Devices allow for you to disable location-based features or manage preferences related to them.

## **8. DISPUTE RESOLUTION**

Certain portions of this Section 8 are deemed to be a "written agreement to arbitrate" pursuant to the Federal Arbitration Act. You and Xumo agree that we intend that this Section 8 satisfies the "writing" requirement of the Federal Arbitration Act. This Section 8 can only be amended by mutual agreement.

**A. First – Try to Resolve Disputes and Excluded Disputes.** If any controversy, allegation, or claim arises out of or relates to the Site, the Content, your Submissions, these Terms, or any Additional Terms, whether heretofore or hereafter arising (collectively, "**Dispute**"), or to any of Xumo's actual or alleged intellectual property rights (an "**Excluded Dispute**"), then you and we agree to send a written notice to the other providing a reasonable description of the Dispute or Excluded Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such information exists or if such information is not current, then we have no obligation under this Section 8.A.

Your notice to us must be sent to: **Xumo, 4 Park Plaza, Suite 1500, Irvine, CA 92614, (Attn: Legal Department)**. For a period of sixty (60) days from the date of receipt of notice from the other party, we and you will engage in a dialogue in order to attempt to resolve the Dispute or Excluded Dispute, though nothing will require either you or us to resolve the Dispute or Excluded Dispute on terms with respect to which you and we, in each of our sole discretion, are not comfortable.

**B. Binding Arbitration.** If we cannot resolve a Dispute as set forth in Section 8.A (or agree to arbitration in writing with respect to an Excluded Dispute) within sixty (60) days of receipt of the notice, then ANY AND ALL DISPUTES ARISING BETWEEN YOU AND XUMO (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT – INCLUDING, BUT NOT LIMITED TO FRAUD, ANY OTHER INTENTIONAL TORT, OR NEGLIGENCE – COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY AND ALL DISPUTES BASED ON ANY PRODUCT, SERVICE OR ADVERTISING CONNECTED TO THE PROVISION OR USE OF THE SERVICE. The Federal Arbitration Act (“FAA”), not state law, shall govern the arbitrability of all disputes between Xumo and you regarding these Terms (and any Additional Terms) and the Service. Xumo and you agree, however, that California or federal law shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and us regarding these Terms and the Service, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to California’s choice of law principles that might apply other states’ laws.

Dispute will be resolved solely by binding arbitration in accordance with the then-current commercial Arbitration Rules of the American Arbitration Association (“AAA”). If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling to get a hearing then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. (“JAMS”) using JAMS’ streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of Xumo consent to in writing. If an in-person arbitration hearing is required, then it will be conducted in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require us to pay a greater portion or all of such fees and costs in order for this Section 8 to be enforceable, then we will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitrator will apply applicable law and the provisions of these Terms and any Additional Terms, will be bound by these Terms and any Additional Terms, will determine any Dispute according to the applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party’s individual claim. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration and class action waiver provisions are for the court to decide. This arbitration provision shall survive termination of these Terms or the Service.

**C. Limited Time To File Claims.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR WE WANT TO ASSERT A DISPUTE (BUT NOT AN EXCLUDED DISPUTE) AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT (BY DELIVERY OF WRITTEN NOTICE AS SET FORTH IN SECTION 8.A) WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES – OR IT WILL BE FOREVER BARRED.

**D. Injunctive Relief.** The foregoing provisions of this Section 8 will not apply to any legal action taken by Xumo to seek an injunction or other equitable relief in connection with, any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Site, any Content, your Submissions and/or Xumo’s

intellectual property rights (including such we may claim that may be in dispute), Xumo's operations, and/or Xumo products or services.

**E. No Class Action Matters.** Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. YOU AND XUMO AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. There shall be no right or authority for any Dispute to be arbitrated on a class action basis or on any basis involving Disputes brought to a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then our agreement in Section 10.B to arbitrate will not apply and the Dispute must be brought exclusively in court pursuant to Section 8.F. Notwithstanding any other provision of this Section 8, any and all issues relating to the scope, interpretation and enforceability of this Section 8.E, including the class action waiver provisions contained herein, are to be decided only by a court of competent jurisdiction, and not by the arbitrator.

**F. Federal and State Courts in Irvine, Orange County, California.** Except to the extent that arbitration is required in Section 10.B, and except as to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute or Excluded Dispute may only be instituted in state or Federal court in Irvine, Orange County, California. Accordingly, you and Xumo consent to the exclusive personal jurisdiction and venue of such courts for such matters.

**G. Small Claims Matters Are Excluded From Arbitration Requirement.** Notwithstanding the foregoing, either of us may bring qualifying claim of Disputes (but not Excluded Disputes) in small claims court, subject to Section 8.F.

## **9. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS" BASIS. Therefore, to the fullest extent permissible by law, Xumo, LLC and its direct and indirect parents, subsidiaries, affiliates and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, "**Xumo Parties**") hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to:

- (a) the Service (including the Content and the Submissions);
- (b) the functions, features, or any other elements on, or made accessible through, the Service;
- (c) any products, services, or instructions offered or referenced at or linked through the Service;
- (d) security associated with the transmission of your Submissions transmitted to Xumo or via the Service;
- (e) whether the Service or the servers that make the Service available are free from any harmful components (including viruses, Trojan horses, and other technologies that could adversely impact your Device);



- (f) whether the information (including any instructions) on the Service is accurate, complete, correct, adequate, useful, timely, or reliable;
- (g) whether any defects to or errors on the Service will be repaired or corrected;
- (h) whether your access to the Service will be uninterrupted;
- (i) whether the Service will be available at any particular time or location; and
- (j) whether your use of the Service is lawful in any particular jurisdiction.

EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN OR IN ADDITIONAL TERMS PROVIDED BY A XUMO PARTY, XUMO PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

Some jurisdictions limit or do not allow the disclaimer of implied or other warranties so the above disclaimers may not apply to the extent such jurisdictions' laws are applicable, and you may have additional rights.

## **10. LIMITATIONS OF OUR LIABILITY**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY XUMO PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, that are directly or indirectly related to:

- (a) the Service (including the Content and the Submissions);
- (b) your use of or inability to use the Service, or the performance of the Service;
- (c) any action taken in connection with an investigation by Xumo Parties or law enforcement authorities regarding your access to or use of the Service;
- (d) any action taken in connection with copyright or other intellectual property owners or other rights owners;
- (e) any errors or omissions in the Service's technical operation; or
- (f) any damage to any user's computer, hardware, software, modem, or other equipment or technology, including damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line, or network failure or any other technical or other malfunction, including losses or damages in the form of lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results, or equipment failure or malfunction.

The foregoing limitations of liability will apply even if any of the foregoing events or circumstances were foreseeable and even if Xumo Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages of the sort that are described above, so the above limitation or exclusion may not apply to you, and you may have additional rights.

**EXCEPT AS MAY BE PROVIDED IN ANY APPLICABLE ADDITIONAL TERMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL XUMO PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID XUMO IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S); PROVIDED, HOWEVER, THIS PROVISION WILL NOT APPLY IF A COURT OR TRIBUNAL WITH APPLICABLE JURISDICTION FINDS SUCH TO BE UNCONSCIONABLE. FOR PURPOSES OF CLARITY, THE PRIOR SENTENCE DOES NOT EXPAND OR LIMIT ANY EXPRESS, WRITTEN PRODUCT WARRANTY THAT IS PROVIDED BY XUMO OR A MANUFACTURER OF A PHYSICAL PRODUCT.**

#### **11. WAIVER OF INJUNCTIVE OR OTHER EQUITABLE RELIEF**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY XUMO (INCLUDING YOUR SUBMISSIONS) OR A LICENSOR OF XUMO.

#### **12. UPDATES TO TERMS.**

**These Terms (or if applicable Additional Terms), in the form posted at the time of your use of the applicable services to which it applies, shall govern such use (including transactions entered during such use). AS OUR SERVICE EVOLVES, THE TERMS AND CONDITIONS UNDER WHICH WE OFFER THE SERVICE MAY PROSPECTIVELY BE MODIFIED AND WE MAY CEASE OFFERING THE SERVICE UNDER THE TERMS OR APPLICABLE ADDITIONAL TERMS FOR WHICH THEY WERE PREVIOUSLY OFFERED. ACCORDINGLY, EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Therefore, you should review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). Any new Terms or Additional Terms will be effective as to new use and**

transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. However, the Terms (and any applicable Additional Terms) that applied when you previously used the Service will continue to apply to such prior use and any specific term to which we previously committed to apply those terms (if applicable) (i.e., changes and additions are prospective only) unless mutually agreed. In the event any notice to you of new, revised or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You should frequently check the home page, and the e-mail you associated with your account (if applicable) for notices, all of which you agree are reasonable manners of providing you notice. You can reject any new, revised or additional terms by discontinuing use of the Service and related services.

### **13. GENERAL PROVISIONS**

**A. Xumo's Consent or Approval.** As to any provision in these Terms or any Additional Terms that grants Xumo a right of consent or approval, or permits Xumo to exercise a right in its "sole discretion," Xumo may exercise that right in its sole and absolute discretion. No Xumo consent or approval may be deemed to have been granted by Xumo without being in writing and signed by an officer of Xumo.

**B. Applicable Law.** These Terms and any applicable Additional Terms will be governed by and construed in accordance with, and any Dispute and Excluded Dispute will be resolved in accordance with, the laws of the California, without regard to its conflicts of law provisions that might apply the laws of another jurisdiction,

**C. Indemnity.** You agree to, and you hereby, defend, indemnify, and hold Xumo Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Xumo Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) your Submissions; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) Xumo Parties' use of the information that you submit to us (including your Submissions) (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by Xumo Parties in the defense of any Claim and Losses. Notwithstanding the foregoing, Xumo Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Xumo Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Xumo Party.

**D. Operation of Service; Availability of Products and Services; International Issues.** Xumo controls and operates the Service from its U.S.-based offices in the U.S.A., and Xumo makes no representation that the Service is appropriate or available for use beyond the U.S.A. If you use the Service from other locations, you are doing so on your own initiative and are responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply. The Service may describe products and services that are available only in the U.S.A. (or only parts of it) and are not available worldwide. We reserve the right to limit the availability of the Service and/or the provision of any content, program, product, service, or other feature described or available on the Service to any person, entity, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content,

program, product, service, or other feature that we provide. You agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or to any sale of goods carried out as a result of your use of the Service.

**E. Severability; Interpretation.** If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms (which will remain in full force and effect). To the extent permitted by applicable law, you agree to waive, and you hereby waive, any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word “including” is used in these Terms or any applicable Additional Terms, the word will be deemed to mean “including, without limitation.” The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms.

**F. Communications.** When you communicate with us electronically, such as via e-mail and text message, you consent to receive communications from us electronically. We will try to promptly respond to all inquiries, but we are not obligated to do so. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

**G. Investigations; Cooperation with Law Enforcement; Termination; Survival.** Xumo reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms, (iii) investigate any information obtained by Xumo in accordance with its **Privacy Policy** in connection with reviewing law enforcement databases or complying with criminal laws, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, except as may be expressly set forth in any applicable Additional Terms, suspend or terminate your access to it, in whole or in part, including any user Accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to Xumo under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from Xumo, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Xumo in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

**H. Assignment.** Xumo may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Xumo.

**I. Complete Agreement; No Waiver.** These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Services. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or us in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

**J. California Consumer Rights and Notices.** California residents can obtain information on our privacy practices, including how we comply with the California Online Privacy Protection Act and the California Shine the Light Act in our **Privacy Policy**.

**K. Connectivity.** You are responsible for obtaining and maintaining all Devices and other equipment and software, and all internet service provider, mobile service, and other services needed for your access to and use of the Service and you will be responsible for all charges related to them.

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