

TERMS & CONDITIONS FOR PERSONAL XLEAP SUBSCRIPTIONS

THESE TERMS AND CONDITIONS FOR PERSONAL SUBSCRIPTIONS (INTERNATIONAL) ARE BETWEEN XLEAP GmbH (hereafter XLEAP) AND "YOU" (COLLECTIVELY, THE "PARTIES").

YOU AGREE THAT THIS AGREEMENT (DEFINED BELOW) IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY ON WHOSE BEHALF THE SERVICE IS USED (E.G., YOUR EMPLOYER).

YOU MAY HAVE ANOTHER WRITTEN AGREEMENT WITH XLEAP THAT SUPPLEMENTS OR SUPERSEDES ALL OR PORTIONS OF THIS AGREEMENT.

1. Definitions.

"Agreement" means these terms and conditions.

"Authentication" means the technical process of testing the identity of an individual. Circumvention or invalidation of this technical test of identity, for instance by publishing, circulating, or passing on login and password information to individuals other than the named individual to be identified, breaches this Agreement.

"Center" means the technical environment in which Sessions are planned, executed, and stored and for which a Subscription must be purchased.

"Content" means all audio, video, multimedia, data, text, images, documents, computer programs, and any other information or materials uploaded or created by or on behalf of You with Your use of the Service.

"Data Processing Addendum" means the Agreement between You and XLeap regarding the respective roles and responsibilities under the GDPR which is incorporated in this Agreement as clause 11.

"GDPR" refers to the General Data Protection Regulation of the European Union.

"Grace Period" is the term measured in weeks or months for which a Center is preserved for renewal after the Subscription has expired.

"Host" refers to the individual who is personally licensed to set up and run Sessions on the Center.

"Participant" means anyone who interacts with the Service by joining or participating in a Session.

"Personal data" 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.

"Service" means the software service and/or services rendered with the respective software service.

"Session" refers to sessions, meetings, conferences, sittings, or workshops in which Participants make use of the Service to communicate with each other or to document or disclose results of their work. These sessions, meetings, conferences, sittings, or workshops may occur in a single location or remotely over the network at the same time or at different times and require control by an authenticated Host.

"Software" means any executable code loaded into the client computer's RAM and executed on the client when using the Service.

"Subscription" means the Agreement between You and XLeap for making available the Center specified in the Subscription Metrics. The Subscription licenses the named individual to control the Center and run Sessions on it.

"Subscription Fee" means the payment agreed between You and XLeap for a given subscription.

"Subscription Metrics" means terms set forth in separate writing (such as a proposal or written agreement between You and XLeap) or an invoice describing the scope of Your right to use the Service. The Subscription Metrics typically spell out the subject of the subscription such as a specific type of Center and the Subscription Period. The Subscription Metrics are incorporated by reference into this Agreement.

"Subscription Period" means the specific term for which the Subscription is valid.

"Subscription Store" means XLeap's system used for transactions related to Subscriptions and for the provisioning of the Service.

"Unlimited Participants" means that the Subscription Metrics do not set a contractual limit to the number of Participants in a Session. There are, however, technological limits to the number of concurrent Participants especially in a voice or video conference. As these limits are, at least in part, outside XLeap's control, the term 'unlimited participants' does not include any assurance that the Service can actually support 'unlimited' or even many Participants at any one time.

“User” means anyone who uses Your Center legitimately, i.e., You and Participants.

“XLeap” means XLeap GmbH, a limited liability company registered in Hamburg HRB 174892 with offices at Efft-
ingstrasse 28, 22041 Hamburg, Germany.

2. Use of the Service.

2.1 Authority to Use Service. You represent and warrant that You have all necessary right, power and authority to enter into this Agreement and to perform the acts required of You hereunder including having a valid license to use the software applications that generate Content (such as presentations or file attachments), and the right to submit Content and Your or a Participant’s Personal Data. Otherwise, You are not permitted to submit such Content or Personal Data to the Service.

2.2 Access to Service. You acknowledge that Your ability to access the Service may require the payment of third-party fees (such as telephone toll charges, ISP, or airtime charges) and that You are responsible for paying such fees. XLeap is not responsible for any equipment You may need to be able to access the Service.

2.3 Log-In Information. To gain access to and use the Service, You are required to create a log-in ID and password (“Log-In Information”). You are responsible for all activity occurring under Your Log-In Information, and You must keep Your Log-In Information confidential and not share Your Log-In Information with third parties. XLeap has no obligation or responsibility regarding Your use, distribution, disclosure, or management of Log-In Information. Notwithstanding the foregoing, XLeap may require You to change Your Log-In Information if such Log-In Information is inconsistent with the terms of this Agreement.

2.4 Limitations. The Service is not designed or licensed for use in hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems. Without limiting the generality of the foregoing, XLeap specifically disclaims any express or implied warranty of fitness for such purposes. Further, the Service is not designed as the primary repository for the content and minutes of past Sessions. Storage of such content occurs for Your convenience only. XLeap specifically disclaims any express or implied warranty of fitness as a primary content repository.

3. Subscriptions.

3.1 The Service. During the Subscription Period, subject to Your payment of the Subscription Fee and any suspension or termination rights in this Agreement, XLeap grants to You a non-exclusive, non-transferable, irrevocable right to access and use the Service per the terms and conditions of this Agreement and the applicable Subscription Metrics. The terms of this clause 3 apply to You solely if the Subscription Metrics indicate You have a right to use the Service.

3.2 Legitimate use. Within the Subscription Metrics and solely in conjunction with use of the Service, You and Participants may load the Software into the temporary memory (e. g. RAM) of a computer and run it for preparing, executing or wrapping up Sessions. You shall not, however, modify, port, adapt or translate the Software. You shall not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Software. XLeap reserves all not explicitly granted rights.

3.3 Contact information. You are the addressee of all correspondence from XLeap regarding this Agreement. It is Your responsibility to supply XLeap with valid contact information.

3.4 Changes. XLeap is free to add, change or discontinue types of Subscription, product, or service. XLeap is also free to change the price of its offerings for any new Subscription Period. XLeap will inform You 30 days in advance of any change of price provided You have supplied valid contact information.

3.5 Assignment. Should XLeap elect to sell the works that make up the Software to a third party, it may cede its rights and obligations under this Agreement to that third party.

3.6 Invoicing. Subscriptions will be invoiced when made available. Renewals will be invoiced at the time of renewal for the next Subscription Period.

You will pay invoices when due without deductions. Any fees that are not paid when due will accrue interest at a rate of 6% p. a. above the basic interest rate published by the European Central Bank.

In case that You have culpably neglected to purchase Subscriptions, You agree that applicable Subscription Fees become due on the day on which the Subscription or renewal would have had to be purchased.

3.7 Cut-off. Should You be in arrears with due payments, XLeap is entitled to cut You off from further delivery including support. The cut-off shall be lifted upon payment of arrears. XLeap will not compensate You for deliveries or benefits that have been withheld during the cut-off period.

3.8 Reference. XLeap may use the fact of Your Subscription as a commercial reference unless You inform XLeap otherwise in writing.

4. Ownership of the Service and Marks.

You acknowledge that XLeap and its licensors own all right, title, and interest in: (a) the Service; (b) any software provided with the Service; and (c) all graphics, logos, service marks, and trade names, including third-party names, product names, and brand names used by XLeap with the Service (the "Marks"). You shall not alter or remove any Marks, or copyright notices included in the Service. Notwithstanding the foregoing, You, or Your respective licensors, as applicable, own all right, title, and interest in and to any graphics, logos, service marks, and trade names used with the Service. You are welcome to send suggestions on improving the Service, but in doing so, You acknowledge and agree that such suggestions will become the property of XLeap who has no obligation to compensate You for such suggestions.

5. Term and Termination.

5.1 Term. Unless renewed, subscriptions expire at the end of the Subscription Period which is specified on purchase.

5.2 Termination.

5.2.1 By XLeap. XLeap may at any time and upon written notice to You immediately terminate this Agreement and Your access to the Service, or suspend or restrict Your access to the Service in whole or in part, if:

- (a) You breach this Agreement and do not cure such breach within ten (10) business days of receiving written notice of the breach from XLeap;
- (b) You breach clause 2.3 (Log-in Information), clause 3 (Subscriptions) or clause 4 (Ownership of the Service and Marks) of this Agreement; or
- (c) XLeap determines in its sole and exclusive judgment that terminating Your access to the Service is advisable for reasons including but not limited to security reasons, to protect XLeap from liability, or for the continued normal and efficient operation of the Service.

5.2.2 By You. You may terminate any subscription for any reason or no reason online or by contacting XLeap's customer service at any time with immediate effect. Termination cancels the remaining duration of the Subscription Period for which there shall be no refund.

Expiration of the Subscription terminates this Agreement.

5.3 Effect of Termination.

5.3.1 Upon termination of this Agreement, You must immediately cease using the Service. Any continued technical availability of the Service does not imply the right to use.

5.3.2 Without obligation, XLeap will maintain the Center and its Content for a grace period of up to 4 weeks beyond the end of the Subscription Period. During this grace period, the Center and its Content can be brought back into operation by renewal of the Subscription. XLeap will delete the Center with its Content automatically at the end of the grace period.

5.3.3 The following clauses of this Agreement shall survive termination of this Agreement: 1. Definitions, 4. Ownership of the Service and Marks, 5.3. Effects of Termination, 6. Content, 7. Notification of Copyright Infringement, 8. Intellectual Property Indemnification, 9. Conduct, 10. Investigations, 11. Data Protection, 13. Disclaimer of Warranties, 14. Limitation of Liability, 15. Governing Law, 16. Miscellaneous.

5.4 Refund. In case of termination by XLeap per clauses 5.2.1.a or 5.2.1.b (breach of agreement) You shall not receive any refund of any prepaid account term. In case of 5.2.1.c, XLeap shall pay out any prepaid fees on a pro rata basis for the remaining Subscription Period if the reasons for terminating access do not lie in Your conduct or responsibility.

6. Content.

6.1 Your Content. You may upload Content to the Service. XLeap does not verify, endorse, or claim ownership of any Content, and You retain all right, title, and interest in and to the Content. Your Content and the Content

of Participants which may include Personal Data may be stored on XLeap's servers at Your request as necessary for the provisioning of the Service.

You are solely responsible for Content including making and keeping back-up copies of Content. Notwithstanding anything to the contrary herein, XLeap has no responsibility or liability for the deletion or accuracy of Content, the failure to store, transmit or receive transmission of Content, or the security, privacy, storage, or transmission of other communications originating with or involving use of the Service. Certain Features of the Service enable You to specify the level at which such Service restricts access to Your Content. You are solely responsible for applying the appropriate level of access to Your Content.

6.2 Your Representations and Warranties Regarding Content. You represent and warrant that (a) You are the owner, licensor, or authorised user of all Content; and (b) You will not upload, record, publish, post, link to, or otherwise transmit or distribute Content that: (i) advocates, promotes, incites, instructs, assists or otherwise encourages hatred, violence or any illegal activities; (ii) infringes or violates the copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual property rights of any third party or XLeap, or any rights of publicity or privacy of any party; (iii) attempts to mislead others about Your identity or the origin of a message or other communication, or impersonates or otherwise misrepresents Your affiliation with any other person or entity, or is otherwise materially false, misleading, or inaccurate; (iv) promotes, solicits or comprises inappropriate, harassing, abusive, profane, defamatory, libellous, threatening, hateful, obscene, indecent, vulgar, pornographic or otherwise objectionable or unlawful content or activity; (v) is harmful to minors; (vi) contains any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or property of another; or (vii) wilfully violates any law, statute, ordinance, or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising).

6.3 XLeap's Access to Content. You acknowledge that the Service is automated (e.g., Content is uploaded using software tools) and that XLeap personnel will not access, view, or listen to any Content, except as reasonably necessary to perform the Service, including but not limited to the following: (a) respond to support requests; (b) detect, prevent, or otherwise address fraud, security, or technical issues; (c) as deemed necessary or advisable by XLeap in good faith to conform to legal requirements or comply with legal process; or (d) enforce this Agreement, including investigation of potential violations hereof, as further described in clause 10 (Investigations).

7. Notification of Copyright Infringement.

7.1 XLeap respects intellectual property rights and expects its Users to do the same. XLeap will respond to clear notices of copyright infringement, and its response to such notices may include removing or disabling access to the allegedly infringing content, terminating the accounts of repeat infringers, and making good-faith attempts to contact the User who posted the content at issue so that they may, where appropriate, make a counter-notification.

7.2 If You believe that Your work has been used or copied in a way that constitutes copyright infringement and such infringement is hosted on the Service, or on sites linked to or from the Service or relating to the Service, please provide written notification via regular mail or via fax (not via email or phone) of claimed copyright infringement to XLeap's Copyright Agent (contact information below), which must contain all the following elements:

7.2.1 A physical or electronic signature of the person authorised to act on behalf of the owner of the copyright interest that is alleged to have been infringed;

7.2.2 A description of the copyrighted work(s) that You claim have been infringed and identification of what content in such work(s) is claimed to be infringing and which You request to be removed or access to which is to be disabled;

7.2.3 A description of where the Content that You claim is infringing is located on the Service;

7.2.4 Information sufficient to permit XLeap to contact You, such as Your physical address, telephone number and email address;

7.2.5 A statement by You that You have a good faith belief that the use of the Content identified in Your notice in the manner complained of is not authorised by the copyright owner, its agent or the law; and

7.2.6 A statement by You that the information in Your notice is accurate and, under penalty of perjury, that You are the copyright owner or authorised to act on the copyright owner's behalf.

7.2.7 Before You file such a notification, please carefully consider whether the use of the copyrighted Content at issue is protected by the 'fair use' doctrine, as You could be liable for costs and attorneys' fees should You file

a takedown notice where there is no infringing use. If You are unsure whether a use of Your copyrighted content constitutes infringement, please contact an attorney before You file Your notice, or reference the content publicly available at www.chillingeffects.org.

7.3 If You believe access to Your content was disabled or removed by XLeap because of an improper copyright infringement notice, please provide written notification via regular mail or via fax (not via email or phone) to XLeap's Copyright Agent (contact information below), which must contain all the following elements:

7.3.1 A physical or electronic signature of the subscriber;

7.3.2 Identification of the content that was removed from the Service and the location on the Service at which the content appeared before it was removed;

7.3.3 A statement under penalty of perjury that You have a good faith belief that the Content was removed or disabled because of a mistake or misidentification of the Content to be removed or disabled;

7.3.4 Information sufficient to permit XLeap to contact You, such as Your physical address, telephone number and email address; and

7.3.5 Before You file such a counter notification, please carefully consider whether the use of the copyrighted content at issue is infringing, as You could be liable for costs and attorneys' fees if a court determines Your counter notification misrepresented that the content was removed by mistake. If You are unsure whether use of the content at issue constitutes infringement, please contact an attorney before You file Your notice, or reference the content publicly available at www.chillingeffects.org.

7.4 XLeap's Designated Agent for notice of claims of copyright infringement can be reached as follows:

By mail: XLeap GmbH
Copyright Agent
Efftingestrasse 28
22041 Hamburg
Germany

By email: copyright@xleap.net

The Designated Agent will not remove content from the Service in response to phone or email notifications regarding allegedly infringing content, since a valid notice of copyright infringement must be signed, under penalty of perjury, by the copyright owner or the person authorised to act on his or her behalf. Please submit such notifications by ordinary mail and send an advance copy of that signed notification by email. The Designated Agent should be contacted only if You believe that Your work has been used or copied in a way that constitutes copyright infringement and such infringement is occurring on the Service or on sites linked to or from the Service or related to the Service. All other inquiries directed to the Designated Agent will not be responded to.

8. Intellectual Property Indemnification.

8.1 Scope. XLeap will defend any claim brought against You by a third party to the extent that it is based on an allegation that the Service infringes such third-party's patent or copyright of the country in which You have taken delivery of the Service. XLeap will pay any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. You must promptly notify XLeap of the claim, give XLeap control of the defence and related settlement negotiations (provided that You may participate with separate counsel of Your own choosing, at Your own expense), and provide XLeap with the reasonable assistance (for which XLeap shall pay You reasonable out-of-pocket costs) in defending the claim. If You desire separate legal representation in any such action, You will be responsible for the costs and fees of that separate counsel. Where XLeap assumes control of the claim, XLeap shall (i) consult regularly with You about, and give You reasonable details of, the conduct of any such claim; (b) duly consider any instructions and/or directions which may be reasonably given by You in connection with the conduct of any such claim; and (c) shall not admit liability or settle any claim which places liability or responsibility on You without first consulting You and obtaining your prior written consent.

8.2 Remedies. If a Software product or Service deliverable of XLeap is held to infringe and its use is prohibited or if, in XLeap's reasonable opinion, is likely to become the subject of an infringement claim, You will permit XLeap, at XLeap's option and expense, to (a) purchase for You the right to continue to use the Service, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) refund the Subscription Fees for the remaining Subscription Period.

8.3 Exceptions. XLeap will have no obligation of defence or indemnity to the extent the infringement claim arises from (a) XLeap's compliance with Your designs, specifications or instructions, (b) use of the Service with third-party software, equipment, or data, other than as specified in the documentation or otherwise approved by XLeap in writing, (c) the furnishing to You of any information, service, or technical support by a third party, (d) non-subscribed use of the Service.

8.4 Exclusive Remedy. This clause 8 states the exclusive obligation of XLeap to You regarding any claim of infringement or misappropriation of any third party's intellectual property rights.

9. Conduct.

9.1 Use Restrictions. Regarding Your access or use of the Service, You agree to not wilfully:

(a) introduce a virus, worm, Trojan horse or other harmful software code or similar files that may damage the operation of a third party's computer or property or information;

(b) use the Service in any manner that could damage, disable, overburden, or impair any server of XLeap, or the network(s) connected to any server of XLeap or interfere with any third party's use and enjoyment of the Service;

(c) attempt to gain unauthorised access to service, materials, other accounts, computer systems or networks connected to any server of XLeap or to the Service, through hacking, password mining, or any other means, unless the Subscription Metrics specify a self-contained server instance and penetration testing has been registered with and permitted by XLeap;

(d) obtain or attempt to obtain any materials or information through any means not intentionally made available through the Service;

(e) engage in any systematic extraction of data or data fields, including without limitation email addresses;

(f) disclose, harvest, or otherwise collect Personal Data, including email addresses, or other private information about any third party without that party's express consent;

(g) transmit junk mail, spam, surveys, contests, pyramid schemes, chain letters, or other unsolicited email or duplicative messages;

(h) sell, lease, or rent access to or use of the Service, or otherwise transfer any rights to use the Service under this Agreement (including without limitation, on a timeshare or service bureau basis);

(i) defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others; or

(j) upload, or otherwise make available, files that contain images, photographs, software, or other material protected by intellectual property laws, including, for example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless You own or control the rights thereto or have received all necessary consent to do so.

9.2 Exposure. You acknowledge and agree that by accessing or using the Service, Participants may be exposed to materials supplied by other Participants that are offensive, indecent, or otherwise objectionable. You acknowledge that the responsibility for deleting such Content rests with the Host of the relevant Session, not XLeap.

10. Investigations.

XLeap does not generally monitor User activity occurring with the Service. If XLeap becomes aware, however, of any possible violations by You of clauses 6.2 (Your Representations and Warranties Regarding Content), 9.1 (Use Restrictions), or any other provision of this Agreement, XLeap reserves the right to investigate such violations. If, because of such investigation, XLeap believes that criminal activity has occurred, XLeap reserves the right to refer the matter to, and to cooperate with, all applicable law enforcement authorities. XLeap is entitled, except to the extent prohibited by applicable law, to disclose any information, including Personal Data about You in XLeap's possession regarding Your use of the Service to law enforcement authorities.

You agree to indemnify and hold XLeap harmless from and against all liabilities, costs and expenses, including reasonable attorneys' fees, related to or arising from Your Content, the Content of Participants, and Your or any Participant's use of the Service.

11. Data Protection

11.1 Scope. You acknowledge that You use the Service under a shared responsibility model. This clause 11 defines the roles, responsibilities and assurances between You and XLeap regarding Data Protection and, in particular, Personal Data under the GDPR. It also serves as the Data Processing Addendum between You and XLeap as required by the GDPR.

11.2 Roles. In the context of this Agreement, XLeap acts as “processor” to You who may act either as “controller” or “processor” as each term is defined in the GDPR.

11.3 Types of information collected. The Service collects a minimum set of Personal Data on Users of the Service, the contributions of Users and circumstantial information as follows:

11.3.1 Personal Data. The Service collects Personal Data solely for the purpose of authenticating Users at login and their identification in the Session. This information is limited to (a) first name and surname, (b) email address and (c) organisation or department. For the purpose of maintaining User accounts via a centralised directory or single sign on, this information can be extended by a unique identifier such as a personnel number.

11.3.2 Contributions of Users. Users and their contributions to Sessions fall into two categories: (a) Participants who submit ideas, comments and ratings, which can include file attachments, and (b) Hosts who set up and run Sessions with Participants and who also contribute Session structures such as agendas and questions by which they organise the Session and guide the work of Participants in the Session.

11.3.3 Circumstantial information. This is information logged for security auditing purposes such as the IP address from which Users connect or which records were created, accessed, or changed. XLeap screens and analyses these logs solely for the purpose of securing the deployment and protecting the information therein. XLeap deletes logs after 90 days.

11.4 XLeap’s obligations and responsibilities. XLeap implements and maintains technical and organisational measures to adequately protect Your data in accordance with and satisfying the requirements of the GDPR and the principle of data secrecy.

11.4.1 Processing. The Service processes Personal Data and contributions of Users only in so far as it provides the technical functionality by which Your Users enter, change, and delete such information. For the avoidance of doubt, XLeap is not involved in the processing of Personal Data and User contributions beyond (a) providing the functionality for such processing by You as part of its Service, (b) creating, restoring and deleting backup copies of the database which hold such information (c) creating, storing and deleting Audit logs and (d) recording subscription information in the Subscription Store.

11.4.2 Storage. Information collected by the Service is stored in encrypted format and is transmitted to Users in encrypted format. XLeap hosts the Centers of residents of the European Union in its European data centre (Dublin, Ireland). If You reside outside the European Union, you will be served from XLeap’s European data centre (AWS Ireland) or its US data centre (AWS Virginia) based on geographical proximity to Your given address.

11.4.3 Disclosure of collected information. XLeap will not disclose or transmit information that has been collected by the Service to anyone, unless required by law following due legal process.

11.4.4 Sub-processing. The Service rests on the infrastructure services of Amazon (AWS) who acts as a sub-processor under XLeap’s control. A GDPR compliant data processing addendum is incorporated in the agreement between AWS and XLeap. XLeap will inform You of any changes of sub-processors.

11.4.5 Personnel. XLeap warrants that personnel entrusted with processing Your data has been vetted and instructed on the protective regulations of the GDPR and have undertaken to comply with the principle of data secrecy.

11.4.6 Encryption. XLeap warrants that information is stored and transmitted only in encrypted format.

11.4.7 Use by XLeap. XLeap makes no use of information collected by the Service other than to keep track of the personal licensing and unlicensing of individuals as Host and to provide information to these Users regarding their new or changed role. For the avoidance of doubt: XLeap does not profile use patterns, User contributions or Personal Data or related information for any purpose and will prevent any third party from doing so.

11.4.8 Other systems. Information collected by Your use of the Service is held (a) in your personal Center, (b) backups of the database that holds the Center and (c) the Subscription Store. The Subscription Store is located in Dublin (European Union) and holds Your name, address and email address as given on purchase or subsequently updated by You. XLeap maintains subscription information as part of its business records in compliance with legal requirements and good commercial practice.

11.4.9 Deletion. XLeap deletes Your Center and its Content automatically at the end of the Grace Period. After deletion, it will take 30 days for Your Center to be fully removed from XLeap's backups. For the avoidance of doubt: After such deletion and removal from backup no copies of Your Center and its Content shall survive, and You accept that such information cannot be subsequently restored.

11.4.10 Use statistics. To improve its product, XLeap keeps anonymous statistics on the use of system components. These statistics do not allow for disaggregation to the level of individual Users or groups of Users.

11.4.11 Notification of breaches. XLeap will inform you without undue delay of any material breach of the regulations for the protection of Your Personal Data, committed by XLeap, its personnel or third parties. XLeap shall implement the measures necessary to secure the data and to mitigate potential adverse effects on the data subjects and shall agree upon the same with You without undue delay. XLeap shall support You in fulfilling Your disclosure obligations regarding such breaches.

11.4.12 Enquiries by data subjects. XLeap will assist You in answering a data subject's enquiry related to Your collection, processing or use of such data subject's data by Your Use of the Service at your written request. You and XLeap acknowledge the right of individuals falling under the protection of the GDPR to access their personal data pursuant to the GDPR and will grant individuals reasonable access to personal information they received pursuant to these principles. In addition, You and XLeap will take reasonable steps to permit individuals to correct, amend, or delete such information that is demonstrated to be inaccurate or incomplete. An individual may request to access his or her information, or otherwise correct, amend, or delete his or her information pursuant to the GDPR by contacting XLeap at privacy@xleap.net.

11.5 Your obligations. While XLeap is responsible for the technical security, availability, confidentiality and functionality of the Service, it falls on You to assure that the Service is used in compliance with the GDPR, the principles of data secrecy and other regulations that may apply to you. This obligation includes but is not limited to the following sub-clauses of this clause 11.5:

11.5.1 Collection of Personal Data. You will collect Personal Data only with the User's consent.

11.5.2 You will uphold the authentication requirements set by XLeap to protect the Personal Data and contributions of Your Users. For the avoidance of doubt: You must not share Your Login Information with anyone and insist that other Users of Your Center do not do so.

11.5.3 Data economy. You acknowledge that the Service is not a repository for the results and the minutes of Sessions and will delete Personal Data after it has served its purpose and apply the principles of data secrecy and economy through the Service's automated procedures to remove old unused Sessions which may hold Participant lists.

12. Service Level Agreement.

12.1 Service Availability Objective. XLeap's objective is to provide Service Availability of 99.9% as measured monthly ("Service Availability Objective"). Service Availability is defined as the time that the Service can receive, process, and respond to requests, excluding (a) Scheduled Maintenance, (b) Customer Error Incidents, and (c) Force Majeure.

Service Availability is calculated as a percentage by dividing the number of minutes the Service is available during the applicable month by the number of total minutes in the applicable month, excluding in all cases Scheduled Maintenance, Customer Error Incidents, and Force Majeure.

12.2 Remedy for Failure to Achieve Service Availability Objective. XLeap will calculate Your Service Availability during a given calendar month at your request. If the Service Availability Objective was not met in a given month, then for each day in such month that the duration of the Service unavailability exceeds four (4) continuous hours, You are entitled to receive a one (1) day Service credit, subject to the Agreement and requirements of this clause 12 (Service Level Agreement). For purposes of calculating the Service Availability Objective, XLeap will only consider the Service unavailable if You opened a trouble ticket relating to the Service unavailability with XLeap's customer support department within three (3) business days of the Service unavailability. To obtain a credit for XLeap's failure to meet the Service Availability Objective, You must request such credit in writing no later than the calendar month following the month of the Service unavailability giving rise to Your credit request. In the event of a conflict between the data in Your records and XLeap's records, the data in XLeap's records shall prevail.

Any Service credit due hereunder will be applied to Your account after the then current Subscription Period. If You purchased the Subscription on a monthly or pay-per-use basis, You are not eligible for any credits arising from or relating to Service unavailability. The Service credit offered in this clause 12 (Service Level Agreement)

shall be Your sole and exclusive remedy for any failure of the Service or any failure of XLeap to meet the Service Availability Objective. Any unused Service credits shall expire upon termination of this Agreement.

12.3 Support response times. XLeap support will respond to queries You submit via the channels offered on XLeap's websites within 4 work hours.

12.4 Definitions.

12.4.1 Scheduled Maintenance is defined as any maintenance performed during XLeap's standard maintenance windows (currently occurring between Saturday 12:01am Central European Standard Time (CET) and Sunday at 11:59pm (CET) and any other maintenance of which You are given at least forty-eight (48) hours' notice. XLeap may perform maintenance on the Service to upgrade hardware or software that operates or supports the Service, implement security measures, or address any other issues it deems appropriate for the continued operation of the Service.

12.4.2 Customer Error Incident is defined as any Service unavailability resulting from Your applications, Content, or Your equipment, or the acts or omissions of any User of the Service.

12.4.3 Force Majeure is defined as natural disasters, acts of terrorism, labour action, fire, flood, earthquake, governmental acts, orders, or restrictions, denial of service attacks and other malicious conduct, utility failures, or any other cause of Service unavailability that was beyond XLeap's reasonable control.

12.4.4 Work hours are the hours between 09:00 and 17:00 hours CET, Monday to Friday excluding official Holidays in Hamburg, Germany.

13. DISCLAIMER OF WARRANTIES.

13.1 THE SERVICE AND THE SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE BASIS" "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND. TO THE FULL EXTENT PERMITTED BY LAW, XLEAP DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE, ACCURACY, SYSTEM INTEGRATION OR COMPATIBILITY, WORKMANLIKE EFFORT, LACK OF NEGLIGENCE, QUIET ENJOYMENT, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, XLEAP DOES NOT WARRANT OR REPRESENT THAT THE SERVICE WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT XLEAP'S SERVERS AND SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT XLEAP'S SECURITY PROCEDURES AND MECHANISMS WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO INFORMATION OR CONTENT BY THIRD PARTIES.

13.2 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY BETWEEN JURISDICTIONS.

14. LIMITATION OF LIABILITY.

14.1 TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE THE SERVICE OR ANY SOFTWARE OR ACCESS DATA, INFORMATION OR CONTENT, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE AND BASED ON ANY THEORY OF LIABILITY INCLUDING STATUTE, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

14.2 SAVE FOR CLAUSE 8 (IP INDEMNIFICATION) AND CLAUSE 11 (DATA PROTECTION), TO THE EXTENT PERMITTED BY LAW, EITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY FOR ANY LIABILITY FOR ANY CAUSE WHATSOEVER UNDER THIS AGREEMENT (INCLUDING ANY INDEMNITIES) WILL BE LIMITED TO THE AMOUNT OF SUBSCRIPTION FEES PAID BY YOU FOR THE SERVICE IN THE LAST TWELVE (12) MONTHS, IF ANY.

14.3 THE LIMITATIONS ON LIABILITY IN THIS CLAUSE 14 (LIMITATIONS OF LIABILITY) ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT EXCEPT FOR CLAUSE 8 (IP INDEMNIFICATION) AND CLAUSE 11 (DATA PROTECTION). SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

15. Governing Law.

By accessing and using the Service, You and XLeap agree that all matters relating to this Agreement and Your access to, or use of, the Service shall be governed by and construed in accordance with the substantive laws in force in Germany. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply.

Each party will, at its own expense, comply with any applicable law, statute, administrative order, or regulation. An action at law under this agreement may only be brought before a court of appropriate jurisdiction in the country whose law governs this agreement under the terms of this clause 15. If a party initiates legal proceeding related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.

16. Miscellaneous.

You are solely responsible for Your familiarity and compliance with any applicable laws that may prohibit You from participating in or using any part of the Service. If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the Parties, and all other provisions will remain in full force and effect. Either party's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the waiving Party in writing. Your rights hereunder may not be assigned or transferred to any third party. Each Party will provide the other with written notice under this Agreement by sending the other party notice as follows: (a) for You, notice will be sent to the email address associated with Your account, and (b) for XLeap, notice will be sent to customercare@xleap.net.

17. General Counsel.

In the event the terms of this Agreement or the Subscription Metrics conflict, the Subscription Metrics shall take precedence. This Agreement and the Subscription Metrics constitute the entire agreement between You and XLeap and supersede all prior agreements, representations, and understandings between the Parties regarding the subject matter contained herein.

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