

**SYMMPL**  
**TERMS OF SERVICE**

Last Modified: April 5, 2017

**1. Scope of Agreement.**

1.1. **Terms of Service.** These terms of service (“**Terms of Service**”) govern the access and use of the website [www.symmpl.com](http://www.symmpl.com), and affiliated websites, features, services, mobile applications, products, software and other services, or any portion thereof (collectively, the “**Service**”), owned or controlled by Symmpl, Inc., a Delaware corporation, or its affiliated companies (“**Symmpl**” or “**we**” or “**our**” or “**us**”). Affiliated companies are entities that control, are controlled by or are under common control with Symmpl.

1.2. **Privacy Policy.** For information about how Symmpl collects, uses, and shares your information, please review our privacy policy (“**Privacy Policy**”), which can be found at [www.symmpl.com/privacy](http://www.symmpl.com/privacy), and is incorporated herein by reference. You agree that by using the Service you consent to the collection, use, and sharing (as set forth in the Privacy Policy) of such information, including the transfer of this information to the United States and/or other countries for storage, processing, and use by Symmpl.

1.3. **Agreement.** These Terms of Service, the Privacy Policy, and any other legal notices published by us on the Service are, collectively, an agreement (this “**Agreement**”) between Symmpl and you (“**You**” or “**your**” or “**you**” or, a “**User**”), a User of the Service. By accessing or using the Service you acknowledge and agree to this Agreement, including, without limitation, these Terms of Service and the Privacy Policy. If you choose to not agree with any of the terms of this Agreement, including, without limitation, these Terms of Service or the Privacy Policy, you may not use the Service.

**2. Intellectual Property.**

2.1. **Ownership of Marks and IP.** The design, trademarks, service marks, and logos of Symmpl and the Service (“**Symmpl Marks**”), are owned by or licensed to Symmpl, subject to copyright and other intellectual property rights under United States, foreign laws and international conventions. Except as otherwise indicated, all copyright rights and other intellectual property rights in the Service and its contents, including any and all Symmpl Marks, content, data, databases, information, text, music, sound, photos, images, graphics, audio, video, software, code, technology, methods, analyses, studies, reports, and other intellectual property contained therein (“**Symmpl IP**”) are owned by or licensed to Symmpl, and protected by law, including copyright, database, trade secret, and trademark laws of the United States and all applicable jurisdictions, as well as other applicable state, national, and international laws and regulations.

2.2. **License.** During the term of this Agreement, Symmpl grants you a limited, non-exclusive, non-transferable license to access the Service for your use in accordance with these Terms of Service. Symmpl reserves all rights not expressly granted in and to the Service. You agree to not engage in the use, copying, or distribution of any of the Service, or any portion thereof, other than as expressly permitted.

**3. Your Account.**

3.1. **Account Registration.** If you choose to register for an account, you must complete the account registration process by providing us with current, complete, and accurate information as prompted by the applicable registration form. You agree to register only once using a single account. You agree you will not (i) register on behalf of another person; (ii) register under the name of another person or under a fictional name or alias; (iii) choose a username that constitutes or suggests an impersonation of any other person (real or fictitious) or entity or that you are a representative of an entity when you are not, or that is offensive; (iv) choose a username for the purposes of deceiving or misleading our Users and/or the Symmpl as to your true identity; or (v) choose a username that incorporates a solicitation.

3.2. **Account Information.** You are entirely responsible for maintaining the confidentiality of your account information and password. Furthermore, you are entirely responsible for any and all activities that occur under your account. You should notify us immediately of any known or suspected unauthorized use of your username and password or any other breach of security. Symmpl will not be liable for any loss that you may incur as a result of someone else using your username, password, or account, either with or without your knowledge. You could be held liable for losses incurred by Symmpl or another party due to someone else using your username, password, or account. You may not use

anyone else's account at any time, without the permission of the account holder. Your account is unique to you and may not be transferred to any third party.

**3.3. Account Security.** Symmpl cares about the integrity and security of your account information. However, Symmpl cannot guarantee that unauthorized third parties will never be able to defeat the Service's security measures or use any personal information you provide to us for improper purposes. You acknowledge that you provide your account information at your own risk.

#### **4. The Symmpl Service.**

**4.1. Eligibility.** The Service is a general audience service and is not intended for Users under 18 years old. We require that only persons 18 years of age or older use any of the Service. By using the Service, you hereby represent that you are at least 18 years old. To view information on our policy regarding the privacy of children under the age of 13, please see the Privacy Policy. Parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that may be considered harmful to minors.

**4.2. Symmpl is a Technology Platform.** You understand that Symmpl acts only as a technology platform and interface between Users and that Symmpl does not itself verify the qualifications of Users, nor does it evaluate or control in any ongoing manner exchanges between Users. Any opinions or statements expressed by a User are of those of the User alone, and are not to be attributed to Symmpl. Symmpl cannot and does not assume responsibility for the accuracy, completeness, safety, reliability, timeliness, innocuousness, legality or applicability of anything said, written, posted, displayed or otherwise made available by any User. Please use caution, common sense, and practice safety when using Symmpl. By using Symmpl, you agree to accept such risks and that Symmpl (and our officers, directors, agents, subsidiaries, joint ventures and employees) is not responsible for any and all acts or omissions of Users.

**4.3. Disputes with Users.** If you have a dispute with one or more Users, you release us (and our affiliates and subsidiaries, and our and their respective officers, directors, employees and agents) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. **In entering into this release you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.**

**4.4. Not Medical or Financial Advice.** Symmpl does not give medical or financial advice. The information and materials available through the Service are for informational and educational purposes only and are not intended to constitute professional advice, diagnosis or treatment, or to substitute for your professional judgment. You assume full risk and responsibility for the use of information you obtain from or through the Service. In addition, we do not recommend or endorse any provider of health care or financial services or health-related or finance related products, items, or services.

#### **5. User Conduct and User Content.**

**5.1. User Conduct.** As a condition of your use of and access to the Service, you agree not to use the Service for any unlawful purpose or in any way that violates these Terms. Any use of the Service in violation of these Terms of Service may result in, among other things, termination or suspension of your account and your ability to use the Service. You may not engage in any of the following prohibited activities:

- (a) Copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; collecting or harvesting any personally identifiable information, including account names, from the Service; altering, modifying or creating derivative works of the Service, or any portion thereof;
- (b) Using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service; accessing any content or features of the Service through any technology or means other than those provided or authorized by the Service;
- (c) Transmitting spam, chain letters, or other unsolicited email; using the Service for any commercial solicitation purpose or political campaigning;
- (d) Attempting to interfere with, compromise the system integrity or security, or decipher any transmissions to or from the servers running the Service; uploading invalid data, viruses, worms, or other software agents through the Service; bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or

restrict use or copying of any content or features or enforce limitations on use of the Service or the content or features therein;

- (e) Taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on Service infrastructure; interfering with the proper working of the Service;
- (f) Impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; or
- (g) The Service is for personal use only. Users may not use the Service or any content contained in the Service (including, but not limited to, content of other Users, designs, text, graphics, images, video, information, logos, software, audio files and computer code) in connection with any commercial endeavors, such as (i) advertising or soliciting any User to buy or sell any products or services not offered by Symmpl or (ii) soliciting others to attend parties or other social functions, or networking, for commercial purposes. Users of the Service may not use any information obtained from the Service to contact, advertise to, solicit, or sell to any other User without his or her prior explicit consent. Organizations, companies, and/or businesses may not use the Service or the Service for any purpose except with Symmpl's express consent (such as for promoted profiles or other advertisements), which Symmpl may provide or deny in its sole discretion. Symmpl may investigate and take any available legal action in response to illegal and/or unauthorized uses of the Service, including collecting usernames and/or email addresses of Users by electronic or other means for the purpose of sending unsolicited email and unauthorized framing of or linking to the Service.

**5.2. User Content.** As a User with a registered account, you may be able to submit content to the Service, including videos, photos, images, audio, text, information (including, without limitation, Personally Identifiable Information), user comments, and any other content (collectively, "**User Content**"). You shall be solely responsible for your own User Content and the consequences of submitting and publishing your User Content on the Service. You further agree that you will not submit to the Service any User Content or other material that is contrary to these Terms of Service or contrary to applicable local, national, and international laws and regulations.

**5.3. Representations.** You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish User Content you submit. You further agree that User Content you submit to the Service will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant us all of the license rights granted herein. We do not permit copyright infringing activities and infringement of intellectual property rights on the Service, and we will remove all User Content if properly notified that such User Content infringes on another's intellectual property rights. We reserve the right to remove User Content without prior notice. By using the Service, you expressly agree not to use, reproduce, modify, adapt, edit, translate, publicly display, telecommunicate or perform, post, upload to, transmit, distribute, store, create derivative works from or otherwise publish throughout the world, in any media, now known or hereafter devised, on or through the Service any of the following:

- (a) User Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, foreign, national or international law, including, without limitation, the regulations of the U.S. Securities and Exchange Commission;
- (b) User Content that is indecent, profane (including masked profanity where symbols, initials, intentional misspellings or other characters are used to suggest profane language), obscene, pornographic, abusive, inflammatory, untrue, misleading, illegal, invasive of privacy or publicity rights, libelous, slanderous or defamatory. We do not tolerate Users harassing, threatening or embarrassing other Users, including harassment or denigration based on age, gender, race, religion, national origin, sexual orientation or disability, marital status or veteran status, or the stalking of other Users;
- (c) User Content that contains any confidential or proprietary information of any person or entity, or that otherwise violates the legal rights of any person or entity. You may not include in any User Content either any email addresses or telephone numbers of any person or entity, including your own. You may not use a false email address, impersonate any person or entity (including any other User), or otherwise mislead as to the origin of your User Content;

- (d) User Content that is unrelated to the topic or context in which such User Content is posted, or that, in the sole judgment of Symmpl, contravenes the above, is otherwise objectionable or inappropriate, or which restricts or inhibits any other person from using or enjoying the Service, or which may expose Symmpl or its affiliates or its Users to any harm or liability of any type.

**5.4. Rights and License.** You retain all of your ownership rights in your User Content. However, by submitting User Content to the Service, you hereby grant Symmpl a worldwide, non-exclusive, royalty-free, sub-licensable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User Content in connection with the Service and Symmpl's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels (including for advertising or other commercial use). If we publish your User Content or authorize or license others to do so, your User Content may be edited for length, format, clarity or for any other reason either before or after it is published. You also hereby grant each User of the Service a non-exclusive license to access your User Content through the Service, and to use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in User Content you submit to the Service terminate within a commercially reasonable time after you remove your User Content from the Service. You understand and agree, however, that we may retain, but not display, distribute, or perform, server copies of your User Content that have been removed. The above licenses granted by you in user comments you submit are perpetual and irrevocable.

**5.5. Community Services.** Symmpl provides a number of means by which you may communicate with other Users and with us, including various communication and personalization tools and services that are part of our Symmpl community (the "**Community Services**"). The Community Services may include comments, discussion forums, and listings, in which you or other Users may post content, messages, materials or other items on the Service. All of your communications made to or through these other means or our Community Services, as well as any attachments to those communications or otherwise submitted to us (such as documents, photographs and videos) are included in the definition of "User Content," and are subject to the terms for User Content as set forth above. You are solely responsible for your use of such Community Services and use them at your own risk. No action should be taken based upon any of the information contained in the Community Services. You should seek independent professional advice from a person who is licensed and/or knowledgeable in the applicable area before acting upon any opinion, advice, or information contained on the Service. All statements, information and other User Content submitted by Users are solely the opinions of Users, and not of Symmpl. You are responsible for all usage and activity in the Community Services through your username and password, including use of your username and password by any third party. You are responsible for all usage and activity in the Community Services through your username and password, including use of your username and password by any third party. You should be aware that disclosure in the Community Services of your full name, street address or other personal information raises safety concerns and may result in solicitations from third parties or unwanted communications. We disclaim any responsibility or liability arising from your disclosure of such personal information, or any other information, in the Community Services.

**5.6. User Content Disclaimers.** We do not endorse any User Content submitted to the Service by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and we expressly disclaim any and all liability in connection with User Content. Symmpl takes no responsibility and assumes no liability for any User Content posted, stored or uploaded by you or any third party, or for any loss or damage thereto or in connection therewith, nor is Symmpl liable for any mistakes, inaccuracies, infringements, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter. As a provider of interactive services, Symmpl is not liable for any statements, representations or User Content provided by its users. Although Symmpl has no obligation to screen, edit or monitor any of the User Content posted to or distributed through the Service, Symmpl reserves the right, and has absolute discretion, to remove, screen or edit without notice any User Content posted or stored on the Service at any time and for any reason and without liability to you or any third party, and you are solely responsible for creating backup copies of and replacing any User Content you post or store on the Service at your sole cost and expense. However, we also reserve the right in our sole discretion to display any User Content that is submitted to us (or to decline to remove any User Content), even if it violates this Agreement. Since not all of the areas of the Service are monitored on a "real time" basis, you may see User Content that violates this Agreement before we do. Please report such items to support@symmpl.com.

## **6. Copyright Policy.**

**6.1. Copyright Agent.** Symmpl respects the intellectual property rights of others and expects users of the Service to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to our designated copyright agent ("**Copyright Agent**"). Our designated Copyright Agent to receive notifications of claimed infringement is:

Symmpl, Inc.  
344 Arno way  
Pacific Palisades CA 90272  
Attn: Copyright Agent  
legal@symmpl.com

For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to support@symmpl.com. You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid.

**6.2. Claims of Infringement.** If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("**DMCA**") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- (a) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (b) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- (c) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- (d) Information reasonably sufficient to permit Symmpl to contact you, such as an address, telephone number, and, if available, an electronic mail;
- (e) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (f) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

**6.3. Counter-Notice.** If you believe that your content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your content, you may send a counter-notice containing the following information to our Copyright Agent:

- (a) Your physical or electronic signature;
- (b) Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- (c) A statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- (d) Your name, address, telephone number, and e-mail address, a statement that you consent to the arbitration provision of this Agreement, and a statement that you will accept service of notice from the person who provided notification of the alleged infringement;
- (e) If a counter-notice is received by our Copyright Agent, we may send a copy of the counter-notice to the original complaining party informing that person that he or she may replace the removed content or cease disabling it in ten (10) business days. Unless the copyright owner files an action seeking a court order against the content provider, or User, the removed content may be replaced, or access to it restored, in ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at our sole discretion.

## **7. Third Parties.**

**7.1. Third Party Links.** The Service may contain links to third-party advertisers, websites or services. You acknowledge and agree that Symmpl is not responsible or liable for: (i) the availability or accuracy

of such advertisements, websites or services, or (ii) the content, products, or resources on or available from such advertisers, websites or services. Links to such advertisers, websites or services do not imply any endorsement by Symmpl of those websites or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or services.

**7.2. Third Party Content.** Through the Service, you will have the ability to access and/or use content provided by third parties. Symmpl cannot guarantee that such third party content will be free of material you may find objectionable or otherwise. Symmpl disclaims any responsibility or liability related to your access or use of any third party content.

**7.3. Third Party Promotions.** Some third parties may promote sweepstakes, competitions, promotions, and other similar opportunities on the Service ("**Third Party Promotions**"). Symmpl is not the sponsor or promoter of these Third Party Promotions and does not bear any responsibility or liability for the actions or inactions of any third parties who organize, administer or are otherwise involved in any of promotion of these Third Party Promotions. If you wish to participate in any of these Third Party Promotions, you are responsible for reading and ensuring that you understand the applicable rules and any eligibility requirements and are lawfully able to participate in such Third Party Promotions in your jurisdiction.

**7.4. Social Media Networks.** The Service may include features that connect to third party social media networks ("**Social Media Networks**") and allow you to share or like content or services with your friends or other users of the Social Media Networks, or you may be able to connect your User account with your Social Media Networks' accounts. To learn more about how your information may be shared with Social Media Networks or how your Social Media Networks' account information may be shared with us, please read our Privacy Policy and the privacy policy or settings of the relevant Social Media Networks.

**7.5. Third Party Listings.** We do not warrant and shall not be liable for the quality of any third party products, services, information, or other material obtained by you through the Service.

**7.6. Errors, Inaccuracies and Omissions.** Occasionally there may be information in the Service that contains typographical errors, inaccuracies or omissions. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information if any information in the Service or on any related website is inaccurate at any time without prior notice. We undertake no obligation to update, amend or clarify information in the Service or on any related website, including without limitation, except as required by law. No specified update or refresh date applied in the Service or on any related website, should be taken to indicate that all information in the Service or on any related website has been modified or updated.

## **8. Fees, Payments and Changes.**

**8.1. Fees.** Symmpl reserves the right at any time to charge fees for access to the Service, or any portion thereof. However, in no event will you be charged for access to the Service unless we obtain your prior agreement to pay such charges. You may cancel your account at any time. You agree to pay all charges that may be incurred by you or on your behalf through the Service, at the price(s) in effect when such charges are incurred. In addition, you remain responsible for any and all taxes that may be applicable to your purchase(s), and you agree that such taxes, if any, are not our responsibility.

**8.2. Payments.** If subscriptions, software, products, or services are made available for purchase through the Service and you wish to purchase such subscriptions, software, products, or services, you may be asked by us or our designee (or, if such product, subscriptions, software, or services are being made available by a third party provider, by such third party provider) to supply certain information relevant to your purchase, including, without limitation, credit card number, expiration date, billing address and shipping information. YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL RIGHT TO USE ANY CREDIT CARD(S) OR OTHER PAYMENT MEANS USED BY YOU OR THROUGH YOUR USERNAME(S) TO PURCHASE ANY SUCH SUBSCRIPTION, SOFTWARE, PRODUCT, AND/OR SERVICE. You acknowledge that any such information will be treated by us in accordance with our Privacy Policy. You grant us the right to provide such information to third parties in order to facilitate the completion of transactions initiated by you or on your behalf through the Service. Verification of information may be required prior to acceptance of any order through the Service.

**8.3. Changes.** We reserve the right, with or without prior notice, to: change prices, descriptions or references to subscriptions, software, products, or services; limit the available quantity of any subscriptions, software, products, or services; honor, or refuse to honor, any coupon, coupon code, promotional code or other similar promotions (collectively, the "**Rewards Program**"); and/or refuse to provide any User of the Service with any subscriptions, software, products, or services. We may modify the Rewards Program, any points, or the terms that govern their usage, at our sole discretion, and such

modifications may make the Rewards Program points more or less common, valuable, effective, or functional.

**8.4 Subscriptions.** For certain Services billed as subscriptions on a monthly basis (“**Subscriptions**”), the term begins when you purchase and ends thirty (30) calendar days later. Your subscription will automatically renew monthly at the full monthly price applicable at the time of purchase or at the regular full monthly price, in the event your purchase was subject to a discount or special promotion, each in accordance with the terms presented to you at the time of purchase. In the event Symmpl discontinues or significantly alters a monthly Subscription that you have purchased with monthly automatic renewal, Symmpl shall notify you via the email address provided at purchase of such cancellation and may provide information about similar or new subscriptions available from Symmpl. To cancel a monthly Subscription, send an email to [support@symmpl.com](mailto:support@symmpl.com). Cancellation will become effective as of the next monthly billing cycle following receipt.

**8.5. Refund Policies for Certain Subscription Services.** In order to provide the highest customer satisfaction possible, Symmpl will refund the purchase price paid for a Subscription if a refund request is made to the email address or telephone number(s) provided immediately above and below within five (5) days of your initial purchase. In no event will Symmpl grant you more than one (1) refund during any given calendar year or provide partial or pro-rated refunds.

## **9. Tablets, Mobile Services and Applications.**

**9.1. “Mobile Services”** means certain software and services that are available via a tablet or mobile device, including (i) the ability to upload data to the Service via a tablet or mobile device, (ii) the ability to use the Service from a tablet or mobile device, and (iii) the ability to access certain features through an application downloaded and installed on a tablet or mobile device.

**9.2. Wireless Carriers.** To the extent you access the Mobile Services through a tablet or mobile device, your wireless carrier’s standard charges, data rates and other fees may apply. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices.

**9.3. Notifications and Messages.** By using the Mobile Services, you agree that we may communicate with you regarding Symmpl and other entities by SMS, MMS, text message or other electronic means to your tablet or mobile device for the purpose of providing the applicable service and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Symmpl account information to ensure that your messages are not sent to the person that acquires your old number. In the event that you fail to comply with the obligation to promptly update your Symmpl account information when changing or deactivating your mobile telephone number, you accept full responsibility for any of your messages, which may not be delivered or may be sent to the person that acquires your old number.

**9.4. License.** Subject to your compliance with this Agreement, Symmpl grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of the Symmpl mobile application (“**Application**”) on a tablet or mobile device that you own or control and to run such copy of the Application solely to access the Service for your own personal non-commercial purposes. Furthermore, with respect to any Application accessed through or downloaded from the Apple App Store (an “**App Store Sourced Application**”), you will only use the App Store Sourced Application (i) on an Apple-branded product that runs iOS (Apple’s proprietary operating system) and (ii) as permitted by the “Usage Rules” set forth in the Apple App Store Terms of Service.

**9.5. App Stores.** You acknowledge and agree that the availability of the Application and the Service is dependent on the third party from whom you received the Application license, e.g., the Apple or Android app stores (“**App Store**”). You acknowledge that this Agreement is between you and Symmpl and not with the App Store. Symmpl, not the App Store, is solely responsible for the Service and Application, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g. product liability, legal compliance, or intellectual property infringement). You agree to pay all fees (if any) charged by the App Store in connection with the Application or Service. You agree to comply with, and your license to use the Application is conditioned upon your compliance with, all applicable third party terms of agreement (e.g., the App Store’s terms and policies) when using the Application and the Service. You acknowledge that the App Store (and its subsidiaries) are third party beneficiaries of these Terms and will have the right to enforce them.

**9.6. Accessing and Downloading the Application from the Apple App Store.** The following applies to any Application accessed through or downloaded from the Apple App Store:

- (a) You acknowledge and agree that (i) this Agreement is concluded between you and Symmpl only, and not Apple, and (ii) Symmpl, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.
- (b) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.
- (c) In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Symmpl and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Symmpl.
- (d) You and Symmpl acknowledge that, as between Symmpl and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- (e) You and Symmpl acknowledge that, in the event of any third party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Symmpl and Apple, Symmpl, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.
- (f) You and Symmpl acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of these Terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App Store Sourced Application against you as a third party beneficiary thereof.
- (g) Without limiting any other terms of these Terms, you must comply with all applicable third party terms of agreement when using the App Store Sourced Application.

**10. Disclosures.** In order to cooperate with legitimate governmental requests, subpoenas or court orders, to protect Symmpl's systems and Users, or to ensure the integrity and operation of Symmpl's business and systems, Symmpl may access and disclose any information it considers necessary or appropriate, including, without limitation, account information (i.e. name, email address, etc.), IP addressing and traffic information, usage history, and posted User Content. Symmpl's right to disclose any such information, as applicable, shall be pursuant to the terms of Symmpl's Privacy Policy. Please see Symmpl's Privacy Policy for the terms of our personal information collection and use practices with respect to the Service.

**11. Termination, Suspension, and Restrictions, and Survival of Terms.**

**11.1. Termination, Suspension, and Restrictions.** Symmpl may terminate or suspend your access to or ability to use the Service immediately, without prior notice or liability, for any reason or no reason, including breach of this Agreement. In particular, Symmpl may immediately terminate or suspend accounts that have been flagged for repeat copyright infringement. Upon termination of your access to or ability to use the Service, your right to use or access the Service will immediately cease. Symmpl may change, restrict access to, suspend, or discontinue any aspect of the Service at any time, including availability of any feature, database, or content. Symmpl may also impose limits on certain features and services or restrict your access to all or parts of the Service without notice or liability.

**11.2. Survival of Terms.** This Agreement's terms and conditions that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability. Termination of your access to and use of the Service shall not relieve you of any obligations arising or accruing prior to termination or limit any liability that you otherwise may have to Symmpl or any third party.

**12. General Disclaimers.** YOU EXPRESSLY AGREE THAT USE OF THE SERVICE (INCLUDING, WITHOUT LIMITATION, MOBILE SERVICES), IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED



ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, SYMMPL, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SYMMPL DOES NOT WARRANT THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED OR THAT SERVICE OR THE SERVERS THAT MAKE IT AVAILABLE ARE FREE OF VIRUSES OR ANY OTHER HARMFUL COMPONENTS. SYMMPL DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE CONTENT OR DATA ON THE SERVICE, WITH RESPECT TO THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. SYMMPL DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCTS, OR SERVICES ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED SERVICES OR FEATURED IN ANY OTHER ADVERTISING, AND SYMMPL WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF PRODUCTS OR SERVICES THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

**13. Limitations of Liability.** IN NO EVENT SHALL SYMMPL, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM YOUR USE OF THE SERVICE (INCLUDING, WITHOUT LIMITATION, MOBILE SERVICES), OR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT OR DATA, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICE, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR DATA OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT OR DATA POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SYMMPL IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. YOU SPECIFICALLY ACKNOWLEDGE THAT SYMMPL SHALL NOT BE LIABLE FOR USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU. IN NO EVENT WILL SYMMPL'S TOTAL AGGREGATE LIABILITY TO YOU UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY YOU TO USE THE SERVICE DURING THE PRIOR SIX (6) MONTHS.

**14. Indemnification.** To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless Symmpl, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorneys' fees) arising from: (i) your use of and access to the Service (including, without limitation, Mobile Services); (ii) your violation of any term of this Agreement; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your User Content caused damage to a User or third party. Symmpl may assume the exclusive defense and control of any matter for which Users have agreed to indemnify Symmpl and you agree to assist and cooperate with Symmpl in the defense or settlement of any such matters. This defense and indemnification obligation will survive the termination of this Agreement and your use of the Service.

**15. Dispute Resolution.**

**15.1. Mandatory Arbitration.** For any dispute you have with Symmpl, you agree to first contact Symmpl and attempt to resolve the dispute informally. If Symmpl has not been able to resolve the dispute with you informally, we each agree to resolve any claim, dispute, or controversy (excluding claims for injunctive or other equitable relief) arising out of or in connection with or relating to this Agreement by binding arbitration by the American Arbitration Association ("**AAA**") under the Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes then in effect for the AAA, except as provided herein. The arbitration will be conducted in the County of Los Angeles, State of California, in

the United States. Each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA rules. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. This arbitration agreement survives the termination of this Agreement between you and Symmpl.

**15.2. Waivers of Class Action and Trial by Jury.** You and Symmpl both waive any right to participate in any class action involving disputes between us, and you and Symmpl are each waiving the right to a trial by jury. All claims must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding, and, unless we agree otherwise, the arbitrator may not consolidate more than one person's claims. This class action waiver is an essential part of our arbitration agreement and may not be severed. If for any reason this class action waiver is found unenforceable, then the entire arbitration agreement will not apply. However, the waiver of the right to trial by jury set forth in this Section will remain in full force and effect.

**15.3. Other Remedies.** Notwithstanding the foregoing, either party may bring an individual action in small claims court. Nothing in this Section precludes you from bringing issues to the attention of federal, state or local agencies. Nothing in this Section shall prevent either party from seeking injunctive or other equitable relief from the courts for matters related to data security, intellectual property or unauthorized access to the Service.

**15.4. Time Limitations.** YOU AND SYMMPL AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES.

**16. Notice for California Users.** Under California Civil Code Section 1789.3, California Users of the online services are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 400 R Street, Suite 1080, Sacramento, California 95814, or by telephone at (916) 445-1254 or (800) 952-5210.

**17. Users From Other Jurisdictions.** By accessing or using the Service, or submitting information, you acknowledge that you accept the practices and policies outlined in this Agreement and consent to having your data transferred to and processed in the United States. If you do not agree to the terms of this Agreement, please do not use the Service. The Service is controlled and operated by Symmpl from the United States. We do not represent or warrant that the Service, or any part thereof, is appropriate or available for use in any particular jurisdiction. Those who choose to access the Service, do so on their own initiative and at their own risk, and are responsible for complying with all local laws, rules and regulations. You also are subject to United States export controls in connection with your use of the Service and are responsible for any violations of such controls, including, without limitation, any United States embargoes or other federal rules and regulations restricting exports. We may limit the availability of the Service, in whole or in part, to any person, geographic area or jurisdiction that we choose, at any time and in our sole discretion.

**18. General.** This Agreement shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. This Agreement, including, without limitation, these Terms of Service, together with the Privacy Policy and any other legal notices published by us on the Service, shall constitute the entire agreement between you and Symmpl concerning the Service. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Symmpl's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. We reserve the right to amend this Agreement, including, without limitation, these Terms of Service and the Privacy Policy, at any time and without notice, and it is your responsibility to review this Agreement, including, without limitation, these Terms of Service and the Privacy Policy for any changes. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Symmpl without restriction. Your use of the Service following any amendment of this Agreement will signify your assent to and acceptance of its revised terms.

**19. Contact Information.** If you have any questions, feedback or to report a violation regarding these Terms of Service, you may email us at [support@symmpl.com](mailto:support@symmpl.com) or contact us by mail addressed to:

Symmpl, Inc.  
344 Arno way  
Pacific Palisades CA 90272