TERMS OF USE FOR XLEAP TRIALS - International

THESE TERMS OF USE FOR TRIALS 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 of Use.

"*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.

"AI Services" refers to generative Artificial Intelligence services that You can integrate with XLeap via their API.

"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.

"Data Protection Officer" designates XLeap's officer responsible for compliance with XLeap's contractual and legal obligations regarding data protection.

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

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"Trial Subscription" means the agreement between You and XLeap for use of the Service on a Trial basis for 14 days, free of charge. The Trial Subscription licenses the named individual to control the Center and run Sessions on it.

"Unlimited Participants" means that the Trial Subscription sets no legal limit to the number of Participants in a Session. There are, however, technological limits to the number of concurrent Participants. 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.

2. Trial 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 Authority to generate Content. You warrant that You have the authority to use the Service 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 Participants' Personal Data to the Service. Otherwise, You and Your Participants are not permitted to submit such Content or Personal Data to the Service.

2.5 AI Services. The legal and commercial conditions under which AI services can be used to contribute to XLeap sessions as participants or to provide assistance to You are agreed directly between You and the provider of the AI Services. Content shared with and produced by AI Services falls under Clause 6 of this Agreement as Your Content.

2.6 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. Trial Subscription.

3.1 The Service. XLeap grants to You a non-exclusive, non-transferable, revocable right to access and use the Service per the terms and conditions of this Agreement.

3.2. Legitimate use. 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 Trial use. In addition to the other terms of this Agreement, as a trial User of the Service, Your right to access and use the Service is limited as provided in the email communication from XLeap acknowledging Your right to use the Service, or as provided in the web pages describing trial use of the Service. This trial Service might be offered later with different features, for a fee, or not at all, as determined by XLeap in its sole discretion. To maintain a consistent quality of service, XLeap reserves the right to suspend trial access to the Service as needed.

3.4. 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.

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. Your right to use the Service on a trial basis shall expire at the time given when You subscribed to the Service on a trial basis.

5.2 Termination. XLeap reserves the right, for any reason in its sole discretion without prior notice, to discontinue or suspend Your trial use, and to terminate Your Trial Subscription. Your rights and the rights of Participants to access Content submitted to Your account and processed by the Service shall expire immediately upon expiration of Your right to use the Service.

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 expiration. During this Grace Period, the Center and its Content can be brought back into operation by upgrade to a regular paid 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. Effect of Termination, 6. Content, 7. Notification of Copyright Infringement, 8. Intellectual Property Indemnification, 9. Conduct, 10. Investigations, 11. Data Protection, 12. Disclaimer of Warranties, 13. Limitation of Liability, 14. Governing Law, 15. Miscellaneous.

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 and provide XLeap with the reasonable assistance (for which XLeap shall pay You reasonable out-of-pocket costs) in defending the claim. 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) terminate the Trial directly.

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 center (Dublin, Ireland). If You reside outside the European Union, you will be served from XLeap's European data center (AWS Ireland) or its US data center (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 ensure 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. DISCLAIMER OF WARRANTIES.

12.1 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.

12.2 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.

13. LIMITATION OF LIABILITY.

13.1 XLEAP SHALL NOT BE LIABLE TO YOU OR ANY THIRD 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 XLEAP OR ITS REPRESENTATIVES HAVE 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.

13.2 XLEAP'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE TRIAL SUBSCRIPTION, IF

ANY. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.

13.3 THE LIMITATIONS ON LIABILITY IN THIS CLAUSE 13 (LIMITATIONS OF LIABILITY) ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT. 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 AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS.

14. 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.

This Agreement constitutes the entire agreement between You and XLeap and supersedes all prior agreements, representations, and understandings between the Parties regarding the subject matter contained herein.

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