

XMPie® Software License and Services Agreement

Effective Date: May 25, 2018

This XMPie® Software License and Services Agreement (this "Agreement") sets forth the terms and conditions that govern Licensee access to and use of the XMPie products and services set forth on the purchase order or other order document and is an agreement between XMPie Inc., a Delaware corporation, and its direct and indirect Affiliates (collectively, "XMPie,") and Licensee or the entity Licensee represents ("Licensee"). This Agreement takes effect upon date Licensee signs this Agreement or when Licensee clicks the "Accept" button, whichever is earlier (the "Effective Date").

This Agreement is comprised of the following Sections:

- A. Software License Terms and Conditions
- B. XMPie Software and Hosted Solutions – Additional Provisions
- C. XMPie E-mail Service (XES)
- D. Payment Terms
- E. Third Party Software Licenses

XMPie and Licensee have executed this Agreement, each by its duly-authorized representative, as of the last date set forth below (the "Effective Date").

| XMPIE | LICENSEE |
|---|----------------|
| XMPie Inc. | [_____] |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Address: 485 Lexington Avenue 25th Floor New York, NY 10017 | Address: _____ |
| Phone: _____ | Phone: _____ |
| E-mail: _____ | E-mail: _____ |
| Date: _____ | Date: _____ |

A. SOFTWARE LICENSE TERMS AND CONDITIONS

1. Definitions.

- 1.1. "Affiliate" means an entity which controls, is controlled by, or is under common control with XMPie Inc., and "control" means ownership or control of more than 50% of the voting rights of an entity.
- 1.2. "API" means the XMPie Application Program Interface.
- 1.3. "Data Source " means the data source that is used for creating personalized content. It may be in a database form or some other simpler format form. A Data Source may be on an on-premises server or on a remote (cloud) server. It is not related to databases that are used internally for the operation of the XMPie software. A Data Source includes, but is not limited to:
 - (i) A list of recipients, including names, demographics, tracking data, using data and other operational data;
 - (ii) Assets (such as images or other content elements), whether provided as separate files or within a special database or a special system for managing assets;
 - (iii) System print outputs, such as proof sets or .pdf files.
- 1.4. "Desktop Machine" is a computer which meets ALL of the following criteria: (a) uses desktop hardware (not server hardware), (b) is the principal computer used by the Licensee in the Licensee's work, (c) has a display attached to it, (d) runs on a desktop operating system.
- 1.5. "Documentation" means all documentation associated with the Software, in any media, including, without limitation and as applicable, the Software user guide, the hardware requirements, the installation guide, the purchase order, the order agreement.
- 1.6. "Effective Date" means the later of the dates set forth beneath the signatures of XMPie and Licensee.
- 1.7. "Fees" means the fees payable by Licensee to XMPie in consideration for the Software license, Services, and/or Maintenance and Support, as set forth in the purchase order or other order document issued or agreed to by XMPie.
- 1.8. "Logic" means a set of rules that determine what content or design styles to choose for a given individual. Logic is also known as "Rules", "Business Logic".
- 1.9. "Losses" means claims, losses, damages, liabilities, costs or expenses of any nature (including reasonable attorney's fees).
- 1.10. "Output" means the hard copy printed documents, the rendering of content on web pages, email or SMS messages, and it also means the computer files that encode all the instructions for rendering the final output (e.g., Postscript files for printing).
- 1.11. "Services" means the services provided by XMPie to Licensee, whether via Software as a Service or otherwise. Services may be hosted by XMPie or by third party cloud providers. "Services" include hosting services, software services, and other services.
- 1.12. "Software" means XMPie software products and XMPie services set forth on the purchase order or other order document, the corresponding Documentation, associated media, printed materials and online electronic Documentation.
- 1.13. "StoreFlow" or "uStore" means the XMPie Software product distributed under the name "StoreFlow" or "uStore".
- 1.14. "Trial Version" means a version of the Software, so identified, to be used only to review and evaluate the Software. The Trial Version may have limited features or might expire after a limited period of time.

2. Grant of Software License.

- 2.1. In consideration for the payment of the Fees, and subject to the other terms and conditions of this Agreement, XMPie hereby grants Licensee, and Licensee hereby obtains, for the term of this Agreement, a non-exclusive, personal, license, without right to sub-license, to use the Software in strict compliance with this agreement and any Documentation provided in connection with the Services.
- 2.2. Licensee may make one backup copy of the Software, provided that the backup copy is not installed or used for any purpose other than archival purposes.
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- 2.9. Licensee shall ensure that at all times it uses the latest versions of patches and fixes for the Software and Services.

2.10. The Software and Services are licensed, not sold. All rights, which are not expressly granted herein, are reserved by XMPie.

2.11. Licensee may use the API only if: (a) purchasing the respective product API licensing from XMPie, or; (b) with the prior written consent of XMPie.

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4.2. XMPie warrants that Services will be performed in a workmanlike fashion and with applicable Documentation.

4.3. **Outage Policy.** LICENSEE ACKNOWLEDGES AND UNDERSTANDS THAT XMPIE DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. XMPIE MAY OCCASIONALLY EXPERIENCE "HARD OUTAGES" DUE TO INTERNET DISRUPTIONS THAT ARE NOT WITHIN THEIR CONTROL. ANY SUCH HARD OUTAGE SHALL NOT BE CONSIDERED A BREACH OF THIS AGREEMENT.

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9. **Effect of Termination.** Upon termination of this Agreement, the license granted herein shall promptly expire. Licensee shall uninstall the Software and shall warrant to XMPie that the Software, any medium thereof and any materials pertaining to the Software have been returned to XMPie. The provisions of Sections A 3, 4, 5, 6, 7, 10, 11, and 13 shall survive termination of this Agreement and shall remain in full force and effect.
10. **Licensee's Employees.** Licensee shall clearly notify each of its employees, sub-contractors, agents, consultants, affiliates, customers with permitted access to the Software, or any other third party that uses the Software of the terms and conditions of this Software License and Services Agreement and shall be responsible and liable for the compliance of such parties with the terms and conditions of this Agreement and for such parties' acts and omissions. Such third parties shall not relieve Licensee of any of its obligations under this Agreement.
11. **Indemnification.**
 - 11.1 Licensee shall indemnify and hold harmless XMPie and its affiliates from and against any Losses arising from Licensee's breach of this Agreement.
 - 11.2 If Licensee is using the XMPie E-mail Service (XES), Licensee shall indemnify XMPie against any Losses arising from XMPie's use, in connection with the performance of the Services hereunder, of any email addresses, Licensee's end user information, or other information that XMPie obtains from Licensee or any of Licensee's affiliates for purposes of providing such services, (iv) any content provided by Licensee or any of Licensee's affiliates, (v) any emails, newsletters, or other materials sent out by Licensee or any of Licensee's affiliates using the Services, (vi) any violation of the Anti-Spam Policy. Licensee shall indemnify and save harmless XMPie, its affiliates, and their respective

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12. Export Rules. Licensee agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export -controlled item under the Export Laws, Licensee represents and warrants that Licensee is not a citizen of, or located within, an embargoed or otherwise restricted nation and that Licensee is not otherwise prohibited under the Export Laws from receiving the Software.

13. Miscellaneous.

13.1. This Agreement together with the accompanying purchase order and the Documentation constitutes the entire agreement between Licensee and XMPie concerning the license of the Software.

13.2. This Agreement shall be governed by the laws of the State of New York, without giving effect to any principles of conflicts of laws thereof, and the state and federal courts sitting in New York, New York, shall have exclusive jurisdiction over all disputes between the parties.

13.3. Licensee may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein without the consent of XMPie.

13.4. Modifications to the Agreement. XMPie may modify this Agreement at any time by posting a revised version on the XMPie website or by otherwise notifying you in accordance with the notices provision of this Agreement; provided, however, that we will provide at least 90 days' advance notice of adverse changes to this Agreement. The modified Agreement will become effective upon posting or on last day of such 90-day notice period, if applicable, or, if we notify you by email, as stated in the email message. By continuing to use the XMPie Service or Software after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the XMPie website regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the end of this Agreement.

B. XMPie Software – Additional Provisions

1. **uProduce.** If the Software is the uProduce server software, then the following provisions shall apply, in addition to and without limiting any of the other sections of this Agreement:
 - 1.1. Licensee may install the uProduce on Licensee's own server(s), the number of which is set forth on the purchase order, and the production volume set forth on the production order, and the specification of which matches XMPie's instructions in the Documentation. XMPie will not install the Software and this Agreement shall have no effect if and until the Licensee's network, hardware and software match such specifications. Access to the Software and the use thereof must be limited to authorized users within the Licensee's organization and cannot be available to third parties;
 - 1.2. If and only if Licensee is expressly authorized in writing by XMPie to use the API, or if and only if Licensee has purchased the Web Services APIs software, Licensee may develop software codes, that interface with XMPie's uProduce product (the "**Custom Code**"). However, Licensee may not disclose, permit disclosure, or distribute the API or the Custom Code; and
 - 1.3. Licensee shall indemnify and save harmless XMPie and the Related Parties against all demands, claims, actions, liabilities, losses, costs, damages or expenses whatsoever (including reasonable attorneys' fees) asserted against, imposed upon or incurred by XMPie and/or any of its Related Parties resulting from or arising out of the use of the API, the Custom Code, the website or any portion of the foregoing.
 - 1.4. XMPie provides an HTML tagging language, JavaScript library, and REST API. XMPie does not guarantee or warrant that XMPie will work with all websites or third party components.
 - 1.5. Licensee may receive from the XMPie access credentials to a Demo Server for the purpose of training or re-selling of the service to the Licensee's customers. Licensee shall not transfer these credentials to any 3rd party without XMPie's express prior written consent in each instance.

2. **Use of Adobe InDesign server.** In addition to the above uProduce related provisions, the use of uProduce may provide Licensee permission to use the Adobe InDesign server under the following conditions:
 - 2.1. The InDesign Server license that is included in the system — if included — is to be used solely through the XMPie system;
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 - 2.3. If Licensee's system does not include uStore or InDesign Document Port license, then Licensee is not allowed to create any application that allows users — such as portal visitors — to access InDesign templates in the system except for viewing them through any kind of API proof interface or getting their final rendering into any print or digital format enabled through the APIs;
 - 2.4. If Licensee's system includes the XMPie Scripting Plug-in then Licensee is allowed to enable web-based interaction with the InDesign templates in Licensee's system to any degree enabled by the scripting plug-in;
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 - 2.6. Adobe is a third party beneficiary under this Agreement.

3. **Use of PhotoShop through ulmage and uProduce.**
 - 3.1. If Licensee uses PhotoShop, as automated through ulmage and uProduce, any number of customers may access the server; and
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6. **Beta Program Obligations.** Licensee acknowledges that Beta software is not complete and is provided without any warranty of any kind. The provisions of this Section 6 apply only to participants in a beta program or trial period:
 - 6.1 Feedback. Licensee will provide active feedback to XMPie on the Software, including suggestions for additional features or functionality, problems ("bugs"), evaluations, software and hardware compatibility, interoperability, performance, and ideas for enhancements (collectively, the "Feedback"). In consideration for the license granted hereunder, Licensee hereby assigns all rights to the Feedback to XMPie, including all copyright and moral rights.
 - 6.2 Surveys. Licensee agrees to respond to a reasonable number of surveys that XMPie will send to Licensee with respect to the Software.
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C. XMPie E-mail Service (XES)

This Section C, XMPie Email Service (XES) applies to Licensees who have contracted with XMPie for e-mail service ("**E-mail Services**").

1. **Use.** Licensee may use the E-mail Services to provide service to Licensee's own clients, provided that its clients agree to comply with the terms of this Agreement.
2. **Anti-Spam Policy.** Licensee hereby acknowledges that jurisdictions vary in the manner that commercial electronic mail transmission is regulated. It is Licensee's sole responsibility to verify and to comply with the applicable laws, rules and regulations that govern the transmission of such messages. Without prejudice to the above, Licensee may use the E-mail Services to send electronic mail messages to customers, subject to the following restrictions: In addition, Licensee acknowledges that if hosting is provided by Amazon Web Services or a similar service, Licensee's account may be subject to the terms of service of such hosted service. See <https://aws.amazon.com/aup/>
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 - 2.3 Licensee may not transmit electronic commercial e-mail messages in violation of the addressees' right to privacy.
 - 2.4 Licensee may be required to reconfirm or stop transmitting messages to addressees included in an existing mailing list if such message transmission is determined to be in violation of this Agreement or any applicable law, rule or regulation. Repeated violations or failures to comply may result in the termination of Licensee's account.
 - 2.5 Licensee will use the Services in strict compliance with the Can-Spam Act of 2003, 15 U.S.C. § 7704(a).
 - 2.6 Licensee will comply with the terms of service of any third party cloud provider such as Amazon Web Services. <https://aws.amazon.com/aup/>
3. **Message Volume.** Licensee may use the Services to send the number of e-mail messages in each annual period that Licensee has indicated on the Commitment Subscription page, which is available at: <http://email.services.xmpie.com>.
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 - 3.3 **Email Account.** Associated with every subscription is the Email Account ("Default Account"). Licensee may, at Licensee's option, purchase separate and additional email accounts (each an "Additional Account") under the same subscription. Each account will be isolated and privately managed, so as to protect Licensee's customers from spam-

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4. Registration And Licensee Account.

- 4.1 When Licensee registers with the Service, XMPie may ask Licensee to provide contact information and other personally identifiable information. Licensee shall submit true, accurate and complete information. False, incorrect or outdated information may prevent Licensee from registering and impair XMPie's ability to provide Licensee with the Services. XMPie will explicitly indicate the fields which are mandatory. If Licensee does not complete the data in these fields, Licensee will not be able to register with the Services.
- 4.2 To log in, Licensee must use Licensee's user name and password. From time to time, XMPie may establish and require additional or different means of identification and authentication for logging in and accessing the Services.
- 4.3 Licensee agrees to maintain Licensee's XMPie E-mail Services (and all Account) passwords in absolute confidentiality. Licensee shall not disclose Licensee's XMPie E-mail Services password to others.
- 4.4 Licensee assumes full responsibility for any damage, loss or claims resulting from Licensee's failure to provide true, accurate and complete information upon registration, and for any use or misuse of Licensee's account as a result of conveying Licensee's user name and/or password to a third party.

D. Payment Terms

1. Payment terms will be set forth in the applicable purchase order or other order document.
2. Circle Subscription Fees; Credits; Renewal. If Licensee subscribes to the Circle Service, the following terms apply:
 - 2.1 Payment of XMPie Circle subscription fees is due at the time of purchase of the XMPie Circle license.
 - 2.2 Licensee may purchase Credits to pay for principal users, as well as other services and goods that XMPie may offer Licensee from time to time. Credits expire twelve (12) months from date of Credits purchase.
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E. Confidentiality; Data Security

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