

XMPie® Circle™ Terms of Use

Welcome to the XMPie® Circle™ Solution ("XMPie Circle"). XMPie Circle is owned and operated by XMPie, Inc. ("XMPie"), a wholly-owned subsidiary of Xerox Corporation. As used in these Terms of Use (these "Terms"), "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. "Licensee" or "You" means the XMPie Circle customer or licensee.

PLEASE READ CAREFULLY THE FOLLOWING TERMS OF USE, AND INDICATE YOUR ACCEPTANCE BY CLICKING THE "I ACCEPT" BUTTON OR SIGNING BELOW.

THESE TERMS TAKES PRECEDENCE OVER AND REPLACES ANY OTHER FORM OR AGREEMENT BETWEEN LICENSEE AND XMPie CONCERNING THE PROVISIONS HEREOF.

XMPie Circle utilizes certain third party software components ("Third Party Software"). You may view the list of the Thirty Party Software and the licenses that govern their use, at: http://xmpie.vo.llnwd.net/o15/downloads/legaldocs/pdf/3rd_party_Copyright_Notices_v1-9.pdf. Licensee's use of the Third Party Software is covered by the respective Third Party Software licenses.

1. License Grant; Service

1.1 XMPie hereby grants to Licensee a limited, non-transferable, non-sublicensable and non-exclusive license to access use XMPie Circle and to deploy the agent component of XMPie Circle (the "Services"). XMPie may improve, add or delete features to, vary the functionality of, and otherwise modify XMPie Circle from time to time in its discretion. XMPie may also vary the XMPie Circle subscription editions it makes available, and vary the functionality within each subscription edition.

1.2 Licensee represents and warrants that the individual User who is listed as the owner of Licensee's account (the "Account") is authorized to bind Licensee and to grant access to other Users. Licensee will notify XMPie of any change in the account owner.

1.3 Licensee may share Licensee's access to XMPie Circle with Licensee's employees, agents, subcontractors, designers and customers, and other third parties whom Licensee may authorize, and their respective employees (each a "User"), provided that each User agrees to comply with the terms set forth in these Terms of Use, and provided further that only Licensee may contact XMPie for support services. To share access, Licensee may invite a User to become a user in the XMPie Circle, and provide such User with permission to work on a certain project using the XMPie Circle. Licensee is liable for all use of the Service by Users who gains access to the Service through the Licensee and for any breach of these Terms by any such User.

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

1.5 Licensee may license the XMPie Circle API upon request to XMPie and payment of the Circle API license fee.

1.6 Licensee has the right to use only the features and resources associated with the Circle edition to which Licensee has subscribed.

2. Restrictions. Licensee and each User shall not, under any circumstances: (i) reverse engineer, reverse compile, or disassemble the object code form of XMPie Circle, in whole or in part; (ii) use any mechanical, electronic, or other method to trace, decompile, disassemble, or identify the source code of XMPie Circle or encourage others to do so; (iii) attempt to gain

unauthorized access to XMPie Circle or their related systems or networks or to violate the security of XMPie Circle. (iv) copy all or any portion of XMPie Circle; (v) offer it for sale or otherwise transfer, offer or deliver XMPie Circle, in whole or in part, to any third party, other than in accordance with Section 1.2 above; (vi) remove any copyright, trademark or other proprietary rights, legends, markings or notices appearing on or contained in XMPie Circle or any portion thereof; (vii) use XMPie Circle, or any portion thereof, for any purpose other than in accordance with the terms and conditions of these Terms of Use; or (vi) disclose XMPie Circle or any portion thereof to any third party other than authorized Users.

3. Beta Program or Trial Period Obligations. The provisions of this Section 3 apply only to participants in a beta program or trial period:

3.1 Feedback. In consideration for receiving access to the XMPie Circle for Beta or Trial, You will provide XMPie active feedback on the XMPie Circle, 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, You hereby assign all rights to the Feedback to XMPie, including all copyright and moral rights.

3.2 Surveys. You agree to respond to a reasonable number of surveys that XMPie will send to you with respect to XMPie Circle.

4. Personal Effect.

4.1 The XMPie Personal Effect Software License Agreement is incorporated in and forms a part of these Terms. Approval of these Terms constitutes approval of the Personal Effect Software License Agreement. http://www.xmpie.com/licenses/XMPie_EULA.pdf. XMPie may in its discretion provide a Licensee with an updated version of the Personal Effect software to ensure compatibility with the Licensee's licensed version of XMPie Circle.

4.2 Licensee will have access to certain Personal Effect services outside of the Circle store, even if Licensee is not a Personal Effect licensee.

4.3 If Licensee is a Personal Effect licensee, regardless of whether Licensee has contracted for ongoing Personal Effect maintenance and support, Licensee will have access to the Personal Effect Build Basic functionality. Build Basic functionality includes print setup and production, e-mail set-up and production, website setup, friendly URL definitions, data source upload, asset upload, font upload, and tracking, all at no additional charge.

4.4 Additional Circle functions such as collaboration and event based filtering, are available at additional charge to Circle licensees.

5. Proprietary and Ownership Rights; Non Disclosure. XMPie Circle, all features of XMPie Circle which XMPie has not made public, the Feedback, and any other written or oral material and information provided to You by XMPie, is confidential and proprietary to XMPie (the "Confidential Information"). You and all Users who access XMPie Circle through You will hold the Confidential Information in strict confidence. You shall not disclose the Confidential Information to any third party. You shall take all necessary steps to assure that each User maintains such confidentiality, and You will be liable for any breach of this non disclosure obligation by any of Your Users.

Licensee acknowledges and agrees that title and full ownership rights to XMPie Circle, the Feedback, and all information and materials resulting from the Feedback, are and will remain the exclusive property of XMPie. Licensee will have no rights to XMPie Circle or the Feedback, except under the license as expressly set forth herein.

6. Subscription Fees; Credits; Renewal.

6.1 Payment of XMPie Circle subscription fees is due at the time of purchase of the XMPie Circle license.

6.2 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. .

6.3 XMPie deducts the Credit amount each day, at 11:59 p.m. Greenwich Mean Time, based on Licensee's and its Users' actual use of Credits.

6.4 Subscription fees may be paid, and Credits may be purchased, via the Circle online store or through another process authorized by XMPie. All payments of up to One Thousand U.S. Dollars (\$1000) must be made by credit card. Wire transfers or other payment methods are permitted for payments greater than One Thousand U.S. Dollars (\$1000).

6.5 XMPie may freeze Licensee's Account if Licensee's Credits are exhausted and/or Licensee's subscription fee is past due.

6.6 Licensee may upgrade or downgrade Licensee's subscription at any time.

6.7 All Subscription fees and Circle purchases are non-refundable.

6.8 If You are accessing XMPie Circle as a participant in a beta program or for a trial period, XMPie may offer you a reduced subscription fee during such beta or trial period. XMPie will notify you of the duration of the beta or trial period.

7. Term and Termination.

7.1 These Terms of Use will take effect when you accept or sign these Terms of Use. The term of your subscription is set forth in the Circle online store. Either You or XMPie may terminate these Terms of Use for any reason upon ten (10) days' prior written notice to the other party. XMPie may disable your Account immediately for Your material breach of these Terms of Use.

7.2 XMPie will provide you with ten (10) days' notice prior to the renewal payment due date. You may pay the renewal fee via the Circle online store at any time on or prior to the payment due date. XMPie may disable your Account if the renewal fee is not paid by the payment due date. XMPie will re-enable your Account if you make payment within thirty (30) days of the payment due date.

7.3 Upon termination of these Terms of Use, XMPie may, in its discretion, cease to provide You and all of Your Users with access to the Service, and delete Your and Your Users' content stored in the Service. XMPie will provide You with at least thirty (30) days' written notice prior to deleting Your and Your Users' content on the Service, unless termination is due to Your material breach of these Terms of Use. All Subscription fees are non-refundable.

7.4 The following provisions of these Terms of Use survive termination of these Terms of Use: Sections 2 (Restrictions), 4 (Proprietary and Ownership Rights), 5 (Non Disclosure), 8 (No Warranty), 9 (Limitation of Liability), 11 (Confidentiality and Privacy) and 13 (General).

8. No Warranty YOU ACKNOWLEDGE THAT XMPIE CIRCLE AND OTHER MATERIAL AND INFORMATION PROVIDED TO YOU UNDER THESE TERMS OF USE ARE PROVIDED ON AN "AS IS" BASIS. XMPIE DOES NOT WARRANT OR REPRESENT THAT YOUR ACCESS TO AND USE OF XMPIE CIRCLE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECTS IN XMPIE CIRCLE ARE CORRECTABLE OR WILL BE CORRECTED. XMPIE DISCLAIMS ANY AND ALL WARRANTIES RELATING TO XMPIE CIRCLE AND SUCH MATERIAL AND INFORMATION, EXPRESS OR IMPLIED, INCLUDING

BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Limitation of Liability IN NO EVENT SHALL XMPiE OR ITS AFFILIATES BE LIABLE TO YOU OR ANY OF YOUR USERS FOR ANY DAMAGES, INCLUDING ANY LOSS OF PROFIT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE USE OF XMPiE CIRCLE OR ANY PART THEREOF, EVEN IF XMPiE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL XMPiE'S LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE SUBSCRIPTION FEES AND CREDIT PAYMENTS PAID BY YOU.

10. Service Level Agreement.

10.1 Service Hours.XMPie will provide general maintance and support for XMPie Circle during the following hours: The US Support Department hours are Monday - Friday, 9 a.m. to 5 p.m. Central Time, excluding federal and Xerox Corp. holidays. The Rest of the World Support Department hours are Sunday - Friday, 8 a.m. to 5 p.m. Western EuropeTime.

- 10.2 Exceptions. The following are excepted from the provisions of this Section 8:
- i. Beta, or Trial Periods. During a beta or trial period, XMPie has no commitment to provide support.
 - ii. If Licensee is not a Personal Effect licensee, free editions (e.g., "Personal Edition") and other free programs. XMPie makes no commitment to provide support to free editions or programs.
 - iii. "lab" or "beta" labeled features. These are provided as-is and not supported in any way.
 - iv. Customer specific solutions.
 - v. Assistance in development.
 - vi. Assistance with non-XMPie Circle products and specifically non-XMPie products, services or technologies, including implementation, administration or use of third-party enabling technologies such as databases, computer networks, website and website components or communications systems.
 - vii. Assistance with installation or configuration of hardware, including computers, hard drives, networks or printers.

10.3 Access. XMPie must be able to reproduce errors in order to resolve them. Customer agrees to cooperate and work closely with XMPie to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Users may also be asked to provide access to their XMPie Circle Account and/or desktop system and or PersonalEffect system for troubleshooting purposes. To assist with the installation process, the XMPie Circle Account might be created with a special support user. To maintain Licensee's privacy and security, support typically remove the User after successful installation. It is Licensee's responsibility to verify that the support user is not on Licensee's list of Licensee's Users, and remove such support user if it is listed. This is especially important if support is not involved in the installation, and will therefore not remove the user.

10.4 Maintenance. XMPie will use commercially reasonable measures to notify You at least three (3) business days in advance before interrupting XMPie Circle service for maintenance on a weekday or Saturday. Maintenance on Sundays may occur without prior notice. Users attempting to access the system during this time will receive a notification advising them of such maintenance event.

10.5 Open Source Projects. XMPie does not provide support or maintenance for any open source projects initiated by XMPie or in which XMPie collaborates. XMPie disclaims all warranties, liabilities, or responsibility for such open source projects.

11. Confidentiality and Privacy

11.1 XMPie will maintain strict confidentiality of Your data, including Your campaign-specific diagrams, artworks, reports, textual information, and numeric information (such as pricing, ROI, etc), and will restrict access to Your data only to Your users and to XMPie relevant personnel, under the confidentiality terms herein.

11.2 XMPie will not disclose or have Your data disclosed, directly or indirectly to any third party, except as specifically required to provide You the XMPie Circle, or subject to Your prior written permission, whether provided under the terms herein, or separately.

11.3 XMPie will take precautions to maintain the confidentiality of Your data with the same degree of care as XMPie applies to its own proprietary data, but in no case less than reasonable care.

11.4 XMPie personnel will access and use Licensee's data subject to the confidentiality terms herein, as required to provide You the XMPie Circle, including to provide support services, to maintain the full functionality of the XMPie Circle, to investigate and fix technical malfunctions, to maintain and enhance information security measures and procedures, and for XMPie Circle product maintenance, control, development and enhancement purposes.

11.5 Upon termination of Licensee's license to use the Services, XMPie will delete all copies of Licensee's data upon your written request, unless XMPie requires such data for its legitimate business purposes, including to settle outstanding payments and to resolve conflicts.

11.6 Notwithstanding the foregoing, Licensee acknowledges that XMPie may, wholly or partially disclose confidential information to the extent the disclosure is required to comply with an order, subpoena, decree or request made by a judicial, administrative or regulatory authority.

11.7 XMPie will collect personally identifiable information of Licensee's Users and contact persons, including their names, contact details, the contents of communications between them and XMPie personnel, etc., and will use common Internet technologies, such as cookies and Web beacons, to keep track of interactions with XMPie's web sites and emails, and to track users' activity.

11.8 XMPie will use the Users' data to operate and provide the XMPie Circle; to improve and customize the experience with XMPie Circle; to send Licensee's Users updates, notices and announcements related to XMPie Circle and other XMPie products and services; to collect fees; to enforce these Terms and to take any action in any case of dispute, or legal proceeding; to prevent fraud, misappropriation, infringements, identity theft and other illegal activities and misuse of the XMPie Circle; and to comply with an order, subpoena, decree or request made by a judicial, administrative or regulatory authority.

11.9 XMPie will maintain the confidentiality of Licensee's Users' data and will use such information only to provide the XMPie Circle, and for XMPie's internal purposes, under the terms hereof.

11.10 XMPie does not share, sell, rent, or trade personally identifiable information with third parties for their promotional purposes. XMPie may share information collected with other companies that work on XMPie's behalf and with XMPie providers, to provide and support the provisions of XMPie Circle. XMPie will use reasonable commercial efforts to ensure that such companies have adopted a privacy policy no less protective of Licensee's data than XMPie's own privacy policy.

11.11 Communication

- a. To perform its obligations under these Terms of Use, XMPie will communicate with Licensee via the the email address and other contact information Licensee's shall have supplied. It will contact Users in your Account that are assigned Account Administrator roles
- b. Should Licensee choose to opt out, XMPie will be free of its obligations to contact or notify You.
- c. For the purpose of these Terms, XMPie may deliver notices by email (or other means of written communication). XMPie will not be held accountable if the communication does not reach its destination, for whatever reason (soft bounce, hard bounce, opt-out, spam filters, black lists, etc).
- d. Licensee and Users will be notified from time to time of improvements to the XMPie Circle, and other news, products and services from XMPie that relate directly or indirectly to the XMPie Circle.
- e. If Licensee's edition of the XMPie Circle includes advertising, such advertising may not be turned off.

11.12 You represent that You have all rights to make the data available to XMPie. You have received all permits required to maintain and process the data by XMPie under the terms herein. If XMPie maintains personal information for You that is related to persons in a jurisdiction that regulates the transfer of personal information outside that jurisdiction, you represent that You hold the necessary permits, permission and consents to transfer personal information outside such jurisdiction for the purposes described herein.

11.13 XMPie may collect, compile, analyze, use and share statistical, aggregated and de-identified information (together: "Anonymized Data"), including Anonymized Data that XMPie generates from Your interactions with XMPie Circle and Your data. XMPie will use and share Anonymized Data with the express provision that XMPie will not knowingly or intentionally share information that can be reasonably used to reveal the identity of individuals, or compromise XMPie confidentiality undertakings under this Agreement. XMPie may process and use Anonymized Data to properly operate the XMPie Circle and to develop and improve its quality and functionality, to enhance Your experience with XMPie Circle and with other XMPie products and services, to create, offer and present new features and added values services, including customized services and to change or cancel existing features and services. XMPie may share, publish, post, disseminate, transmit, allow access or otherwise communicate and make available Anonymized Data to its Affiliates, suppliers, business partners, sponsors, developers and any other third party, at XMPie's sole discretion.

11.14 XMPie does not store any recipient database information to the Circle cloud. Exceptions are the recipient IDs, tracking events stripped of PII data, and recipients that are defined by the Licensee as being Sample Recipients (used for preview purposes).

12. Information Security.

12.1 Licensee shall ensure that each User who accesses the XMPie Circle through You has a unique user identification in the system, a unique password, does not share the password, and takes proper measures to secure the password. XMPie will have no further obligation with respect to security if such obligation is breached.

12.2 XMPie takes measures to protect Licensee's data using advanced technology for Internet Security -- technologies such as SSL, certificates, password hashing, mutli-tenant filter layer, multi-layer network architecture and firewalls.

12.3 The measures described in this Section 12 reduce the risk of security breaches, but they do not provide absolute security. Therefore, XMPie cannot guarantee that its services will be immune from any wrongdoings, malfunctions, unlawful interceptions or unauthorized access to the stored information. From time to time, XMPie may modify the security measures that it uses.

12.4 XMPie acknowledges the valuable role that independent security researchers play in Internet security. Keeping XMPie's users' data secure is a priority, and we encourage responsible reporting of any vulnerabilities that may be found in our site or application

12.5 XMPie does not provide compensation for reporting a security vulnerability, and any requests for such compensation will be considered a violation of the conditions above. In such an event, XMPie reserves all of its legal rights.

12.6 XMPie grants access to stored personal information to XMPie employees, contractors, vendors and agents on a need-to-know basis. These individuals are obligated to keep the personal information confidential. They may be subject to penalties, termination of relations and criminal prosecution, for failing to comply with their confidentiality obligations.

13. General

13.1 These Terms of Use constitute the entire agreement between the parties concerning the subject matter hereof. XMPie may revise these Terms from time to time. The most current version will always be at http://www.xmpie.com/licenses/XMPie_Circle_Subscription_Agreement.pdf. If XMPie deems the revision to be material, XMPie will notify Licensee via update or e-mail to the email associated with your Account. By continuing to access or use the Services after those revisions become effective, Licensee agrees to be bound by the revised Terms.

13.2 These Terms shall be governed exclusively 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 Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between Licensee and XMPie.

13.4 Licensee may not assign or otherwise transfer by operation of law or otherwise these Terms or any rights or obligations herein without the prior written consent of XMPie.

13.5 XMPie is a wholly-owned subsidiary of Xerox Corp., a New York corporation. Any reference made in these Terms to XMPie shall be deemed to have been made to XMPie Inc., XMPie Ltd., and Xerox Corp. XMPie may assign any and all of its rights and duties under this Agreement to any of its Affiliates.