# Xenovus, Inc. Terms of Service

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Please read these Terms of Service (the "Terms") carefully before accessing or using the Websites or Services. By using the Services and/or accessing the Xenovus websites you acknowledge and agree to (i) these Terms; and (ii) the Xenovus Privacy Policy, located at <a href="https://www.backflipt.com/privacy">https://www.backflipt.com/privacy</a>. If you are using the Services on behalf of an organization, you are agreeing to these Terms for that organization and representing that you have the authority to bind that organization to these terms. In that case, "you" and "your" will refer to that organization and any related users. You may use the Services only in accordance with these Terms and only if you have the legal power and capacity to form a contract with Xenovus.

If you do not agree to these Terms or the Privacy Policy, please do not access the websites or use the Services. Xenovus may change and offer new services and/or features through the websites from time to time. Such Services shall be subject to these Terms. Xenovus reserves the right to change these Terms at any time. We recommend that you periodically check this website for changes. The websites and Services are available only to individuals who are at least 18 years old.

### **Third Party Service Agreements**

If you have entered into or are subject to any agreement with Dropbox, Box, or any other third party for non-Backflipt<sup>TM</sup> services, such as email services, Facebook, LinkedIn, Google, Twitter, etc. ("Third Party Services"), from which you authorize us to import your contacts, archived email, and other data and/or export data, ("Third Party Services Agreement"), any such Third Party Services Agreement shall not apply to Xenovus or Backflipt<sup>TM</sup>, and Backflipt<sup>TM</sup> shall not be considered a service or product or part of any service or product under such Third Party Services Agreement, unless otherwise expressly agreed in writing by Xenovus.

## Registration

Some portions of our Services may be available to users without registering while other features will only be available to those users who register with us. In consideration of your use of the Services, you agree to (a) provide accurate, current and complete information about you as may be prompted by any registration forms on the Services ("Registration Data"); (b) maintain the security of your password and identification; (c) maintain and promptly update the Registration

Data, and any other information you provide to us, to keep it accurate, current and complete; and (d) be fully responsible for all use of your account and for any actions that take place using your account.

# Free Trial of Backflipt<sup>TM</sup>

If you register on our website for a free trial of our Backflipt<sup>TM</sup>, we will make one or more services available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use Backflipt<sup>TM</sup>, or (b) the start date of any purchased service subscriptions ordered by you for Backflipt<sup>TM</sup>; or (c) the date you unsubscribe from such service. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into these Terms by reference and are legally binding.

IF YOU ELECT TO USE BACKFLIPT™ FOR THE TRIAL PERIOD AND DO NOT PURCHASE A SUBSCRIPTION BEFORE THE END OF THE TRIAL PERIOD, YOUR TRIAL SUBSCRIPTION FOR BACKFLIPT™ WILL EXPIRE AT THE END OF THE TRIAL PERIOD AND SHALL NOT AUTO-RENEW. ANY DATA ENTERED INTO BACKFLIPT™ BY YOU OR RECEIVED BY YOU IN CONNECTION WITH YOUR USE OF BACKFLIPT™, AND ANY CUSTOMIZATIONS THAT MAY BE MADE TO BACKFLIPT™ BY YOU DURING THE FREE TRIAL PERIOD, WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO BACKFLIPT™ BEFORE THE END OF THE TRIAL PERIOD.

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#### **Your Data**

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In order to host your information within Backflipt<sup>TM</sup> and provide the associated benefits of using Backflipt<sup>TM</sup>, you may also provide us with your login credentials for certain Third Party Platforms ("Third Party Login Credentials"). You hereby authorize us to utilize those Third Party Login Credentials to incorporate your data, from those Third Party Platforms into your data in our Services. If you install or enable any third-party application for use with Backflipt<sup>TM</sup> Service (e.g., Google, Dropbox, Box), you grant us permission to allow the provider of that application to access Your Data as required for the interoperation of that third-party application with Backflipt<sup>TM</sup> Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a third-party application.

You grant Xenovus a worldwide, perpetual license to host, copy, transmit and display Your Data as necessary for Xenovus to provide Backflipt<sup>TM</sup> Services in accordance with these Terms. You also grant to Xenovus a royalty-free, perpetual, worldwide, transferable, sub-licensable license to transfer Your Data to third party service providers used by Xenovus in providing Backflipt<sup>TM</sup>. The foregoing licenses each include all necessary rights and licenses to incorporate Your Data into Backflipt<sup>TM</sup> content, as the term is defined in our Privacy Policy, and by acceptance of these Terms, you direct Xenovus to incorporate Your Data into such content. If we are required by a licensor to remove content, or receive information that content provided to you may violate applicable law or third-party rights, we may so notify you and in such event you will promptly remove such content from your systems.

You represent and warrant that you have the right to provide us with your data and to permit us to use and disclose your data within the parameters authorized by these Terms and our Privacy Policy. You are solely responsible for your conduct, the content of Your Data, and your communications with others while using the Services. For example, it's your responsibility to ensure that you have all rights and permissions needed to comply with these Terms and to avoid infringement or violation of any rights of others. You will be responsible for your users' compliance with these Terms and will use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify us promptly of any such unauthorized access or use.

You acknowledge that Xenovus has no obligation to monitor any information on the Services and that we are not responsible for the accuracy, completeness, appropriateness, safety or legality of Your Data or any other information or content you may be able to access using the Services.

## **Sharing Your Data and Your Privacy**

Subject to the limited exceptions specified in our Privacy Policy, until you choose otherwise, all of Your Data remains visible only to you. However, the Services do allow you to share Your Data with others. If you choose to share Your Data, we cannot be responsible for what those other users do with Your Data, so please carefully consider what you share and with whom you share it.

We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data as described in our Privacy Policy. We do not guarantee that Your Data will be free from loss, theft, misuse, or unauthorized access, disclosure,

alteration or destruction. You acknowledge that it is your responsibility to use a secure encrypted connection if you wish to protect Your Data when you are transmitting it to us and to keep your own backup copies of Your Data. You are solely responsible for protecting your passwords, limiting access to your computers and devices, and signing out of Backflipt<sup>TM</sup> when you are not using them.

**Payments.** If you purchase any Services that we offer for a fee, either on a one-time or subscription basis ("Premium Services"), you agree that Xenovus or its third party payment processing service provider may store your payment card information. You also agree to timely pay the applicable fees for the Premium Services (including, without limitation, periodic fees for premium accounts), plus all related taxes. You may cancel your Services by using unsubscribe option in Backflipt.

Except as otherwise specified herein, (a) fees are based on Services purchased and not actual usage, (b) payment obligations are non-cancelable and fees paid are nonrefundable, and (c) quantities purchased cannot be decreased during the relevant subscription term. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever. You are responsible for paying all taxes associated with your purchases. You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by us regarding future functionality or features.

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While we appreciate it when users send us feedback, please be aware that we (or others we authorize) may use in any manner any feedback, comments, or suggestions you post in our forums or otherwise provide without any obligation to you.

## **Copyright Policy**

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Any notice of alleged copyright infringement on the Services or websites should be sent to:

Xenovus, Inc.

Attn: Legal Department

4633 Old Iron Sides #404, Santa Clara, CA, 94054

## **Other Content**

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User Conduct. The Services are available for your personal use only. Information and other content in the Services may be protected by intellectual property rights of others. You must not copy, upload, download, or share files unless you have the right to do so. You are solely responsible and liable for what you copy, share, post, upload, download or otherwise use while using the Services. You represent, warrant and agree that your data or information shared through your account or otherwise shared by you on or through the Services will not violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; be in violation of any law or used in furtherance of any such violation; or contain libelous, defamatory or otherwise unlawful material.

#### **Termination or Modification**

You can stop using our Services any time and we reserve the right to suspend, terminate, or modify the Services, in general or with respect to you, in whole or part at any time, with or without cause, and with or without notice, without incurring liability of any kind. We may also delete any content or data from the Services at our discretion. Without limitation, we may suspend or terminate your Services if you are not complying with these Terms, or if you use the Services in any way that may cause us legal liability or disrupt others' use of Backflipt<sup>TM</sup> or damage to our business or reputation, or for any other reason. You acknowledge that if your access to the Service is suspended or terminated, you may no longer have access to Your Data that is stored with the Service.

All provisions of these Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, rights in data you share with

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You are solely responsible for maintaining and protecting all of Your Data. We are not liable for any loss or corruption of Your Data, or for any costs, fees, or expenses associated with backing up or restoring any of Your Data.

If any information related to your account changes, you must notify us promptly and keep your information current. The Services are not intended for use by you if you are under 18 years of age. By agreeing to these Terms, you are representing to us that you are over 18.

We reserve the right to investigate possible violations of these Terms, block users from accessing the Websites and Services, and refer matters to law enforcement authorities for further investigation. We may disclose information to third parties, in accordance with our Privacy Policy, located at <a href="https://www.backflipt.com/privacy">https://www.backflipt.com/privacy</a>.

We reserve the right to use whatever legal means we deem appropriate to monitor your compliance with these Terms and to prevent unauthorized access to or use of the Services, including, but not limited to, technological barriers, IP mapping, and contacting your Internet Service Provider (ISP) regarding such unauthorized use.

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D. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IF YOU RESIDE IN SUCH A JURISDICTION,

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A. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE XENOVUS PARTIES BE LIABLE FOR (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, OR CONSEQUENTIAL DAMAGES, (B) LOSS OF PROFITS, (C) BUSINESS INTERRUPTION, (D) LOSS OF OR DAMAGE TO REPUTATION, OR (E) LOSS OF INFORMATION OR DATA REGARDLESS OF LEGAL THEORY, WHETHER OR NOT XENOVUS HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

B. THE XENOVUS PARTIES' MAXIMUM AGGREGATE LIABILITY TO YOU FOR ANY CAUSES WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (WHETHER SUCH LIABILITY ARISES DUE TO NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION OR FOR ANY OTHER REASON), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF (I) THE AMOUNT PAID, IF ANY, BY YOU TO XENOVUS IN CONNECTION WITH THE SITE AND SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY OR (II) US \$10.00.

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**Indemnification.** You agree to indemnify and hold harmless Xenovus, its contractors, and its licensors, and their respective directors, officers, employees and agents, and affiliates from and against any and all claims and expenses, including attorneys' fees, arising out of your use of the websites and Services, including but not limited to your violation of these Terms.

**Changes.** Xenovus reserves the right, at its sole discretion, to modify or replace any part of these Terms. It is your responsibility to check these Terms periodically for changes. Your continued use of or access to the websites or Services following the posting of any changes to these Terms constitutes acceptance of those changes. If you do not agree to the new terms, simply don't use the Services or the websites after the change is effective.

# **Miscellaneous Legal Terms**

These terms and the use of the services and software will be governed by California law except for its conflicts of laws principles. All claims arising out of or relating to these terms or the services or software must be litigated exclusively in the federal or state courts in Santa Clara, California, and both parties consent to venue and personal jurisdiction there.

These Terms constitute the entire and exclusive agreement between you and us with respect to the Services, and supersede and replace any other agreements, terms and conditions applicable to the Services. These Terms create no third party beneficiary rights. Our failure to enforce a provision is not a waiver of its right to do so later. If a provision is found unenforceable the remaining provisions of these Terms will remain in full effect and an enforceable term will be substituted to reflect our intent as closely as possible. You may not assign any of your rights in these Terms, and any such attempt is void. We may, without notice to you, assign our rights and obligations to any of our affiliates or subsidiaries, or to any successor in interest of any business or assets associated with the Services.

Except as otherwise set forth in these Terms, you should direct any legal notice in connection with Backflipt<sup>TM</sup> to Backflipt<sup>TM</sup>, Attn: Legal Department, Xenovus, Inc. 4633 Old Iron Sides #404, Santa Clara, CA, 94054.