

## **End User License Agreement for Xprestimate**

Effective Date: **TBD**

THESE TERMS OF USE ARE ENTERED INTO BY AND BETWEEN YOU AND NEW JERSEY MANUFACTURERS INSURANCE COMPANY (“NJM”). THE FOLLOWING TERMS AND CONDITIONS (THE “AGREEMENT”) GOVERN YOUR ACCESS TO AND USE OF XPRESTIMATE, INCLUDING ANY DOCUMENTATION, FUNCTIONALITY AND SERVICES OFFERED ON OR THROUGH XPRESTIMATE (COLLECTIVELY, “XPRESTIMATE”). XPRESTIMATE IS OWNED BY NJM AND/OR CCC INFORMATION SERVICES INC. (“CCC”) AND/OR ITS LICENSORS AND IS MADE AVAILABLE TO YOU BY NJM PURSUANT TO THIS AGREEMENT.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU START TO USE XPRESTIMATE. BY DOWNLOADING, INSTALLING, OR USING XPRESTIMATE, YOU ACKNOWLEDGE AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. SHOULD YOU NOT ACKNOWLEDGE AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST IMMEDIATELY UNINSTALL XPRESTIMATE AND/OR DISCONTINUE ITS USE. CONTINUED USE OF XPRESTIMATE SIGNIFIES YOUR CONTINUED ACCEPTANCE OF THIS AGREEMENT AND ANY CHANGES TO IT.

If you are a resident of the United States (including its possessions and territories), by accepting this Agreement you are agreeing to the Arbitration Agreement and class action waiver described herein to resolve any disputes with NJM and/or its licensors (except for matters that may be taken to small claims court).

Xprestimate is designed to allow individuals to take photographs and videos of their damaged vehicles, upload those photographs and videos (along with additional information) to NJM, the insurance carrier that is handling their claims, and receive information relating to their damaged vehicles, such as vehicle damage repair estimates. In addition, Xprestimate is designed to allow individuals to utilize video for live communications with representatives of NJM, and to allow individuals and representatives of NJM to record and transmit to NJM or its representatives photographs and videos of the individual’s damaged vehicle(s). All use of Xprestimate for any other purpose is strictly prohibited.

Please limit your submissions to the following: (a) a photograph of your current odometer reading; (b) a photograph of your Vehicle Identification Number (“VIN”); (c) photograph(s) and/or video(s) of your vehicle, including but not limited to, the damage to your vehicle; (d) a brief text description of the damage to your vehicle and (e) your vehicle’s option information. Please do not include any personal information about you, or any other person, in the photographs, videos or text you submit to Xprestimate. Everything you submit to Xprestimate will be shared, unedited, with NJM and other parties, as described in our Privacy Policy.

### **Incorporation of Related Terms and Third Party Content**

Xprestimate may be used on Apple iPhone® mobile phone devices and Android™ mobile phone devices (individually, a “Device” and collectively, the “Devices”). You are responsible for paying for all rates and charges in connection with using the Devices.

Third party content may be made available to you in connection with Xpreestimate (the “Content”). All statements and/or opinions expressed in the Content are solely the opinions and responsibility of the person or entity providing those materials. NJM does not endorse such third party services or the Content and does not and cannot pre-screen or monitor Content. NJM shall not be liable for any products, services or the Content of third parties or the accuracy of any such products, services or the Content.

You acknowledge and agree that different terms of use and privacy policies may apply to your use of the Devices and the Content (the “Third Party Terms”). Should any provisions in the Third Party Terms conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement will control, solely to the extent such provisions apply to Xpreestimate.

### **Privacy Policy**

All information NJM collects from Xpreestimate is subject to the New Jersey Manufacturers Insurance Company Privacy Policy (“Privacy Policy”), the location and terms of which may be changed from time to time. By using Xpreestimate, you acknowledge that you have read and understood the Privacy Policy.

### **NJM Content**

As part of Xpreestimate, you may be provided with content developed by NJM or its licensors. NJM reserves the right to disable or remove any NJM Content for any reason at any time without notice to you.

### **License**

You must be at least 16 years old to access and use Xpreestimate. If you are under the age of 18, you must review this agreement with your parent or guardian to ensure that you and your parent or your guardian understand the terms of this Agreement. No use of Xpreestimate is permitted for minor children under 14 years old. Subject to this Agreement, NJM grants you a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to use Xpreestimate solely for your personal, non-commercial use and only on a Device that is owned or controlled by you as permitted under the applicable Apple or Google terms and conditions and in accordance with this Agreement and only in the United States. In addition, NJM grants you a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to use the NJM Content solely for your personal, non-commercial use in connection with Xpreestimate.

This Agreement also governs any updates to or supplements or replacements for Xpreestimate and the NJM Content, unless separate terms accompany such updates, supplements or replacements, in which case the separate terms will apply.

You may not (a) remove any copyright, trademark or other proprietary notices from any portion of Xpreestimate or the NJM Content; (b) reproduce, modify, create derivative works based upon, distribute, license, lease, sell, resell, transfer, publically display, transmit, stream, republish, broadcast or otherwise exploit Xpreestimate or the NJM Content except as set forth in this Agreement; (c) decompile, reverse engineer or disassemble Xpreestimate or the NJM Content; or (d) link to, mirror or frame any portion of Xpreestimate or the NJM Content.

Any use of Xpreestimate and the NJM Content not specifically permitted under this Agreement is strictly prohibited.

### **Intellectual Property Rights and Feedback**

All right, title and interest (including all copyrights, patents, patent rights, trade secrets, trademarks, service marks, trade names, moral rights and other intellectual property and proprietary rights) in Xpreestimate and the NJM Content (including any modification, translation or adaptation thereof and any other improvement or development thereto or based thereon which is suggested by you (the “Feedback”)) are and shall remain the sole and exclusive property of NJM, CCC or their licensors.

You acknowledge and agree that (a) the Feedback does not contain confidential or proprietary information of third parties; (b) NJM is under no obligation of confidentiality regarding the Feedback (express or implied); (c) NJM may have something similar to the Feedback; (d) NJM is under no obligation to use the Feedback; and (e) NJM may use, distribute, exploit, assign and further develop and modify the Feedback for any purpose, and you shall not be entitled to any compensation of any kind. To the extent that any copyright or other intellectual property ownership interest vests in you with respect to the Feedback, you hereby grant NJM a worldwide, non-exclusive, royalty-free, fully paid up, irrevocable, sub-licensable and perpetual right and license to make, use, copy, sell, distribute, otherwise exploit and create derivative works of the Feedback. You irrevocably release NJM from any and all liability and claims that may result from or are related to the rights in the Feedback. No right, title or interest in or to Xpreestimate, the Content or NJM Content is transferred to you, and all rights not expressly granted are reserved by NJM.

### **Account Information**

To access Xpreestimate, you may be asked to provide certain registration details or other information (the “Account Information”). It is a condition of your use of Xpreestimate that all of the information you provide is correct, current and complete.

If you fail to maintain truthful, accurate and complete Account Information, your access to and use of Xpreestimate may be terminated. You are responsible for (a) updating your Account Information; (b) protecting your Account Information against use by others; and (c) promptly notifying NJM of any misuse or unauthorized access to or use of your Account Information. You are personally responsible for any use of Xpreestimate, the Content and the NJM Content and any activity that occurs under your Account Information.

### **User Information**

By acknowledging and consenting to this Agreement, or by downloading, installing or using Xpreestimate, you agree that NJM, its affiliates, agents, third party partners, and successors, may use, process, maintain, share (including, but not limited to, share with CCC), and/or transmit the information you provide through your use of Xpreestimate—including your Personal Information (as defined in the Privacy Policy)—for the purposes disclosed in this Agreement and the Privacy Policy (collectively, “User Information”).

You further agree to immediately notify NJM of any suspected unauthorized transactions associated with Xprestimate or any other breach of security. NJM shall not be responsible for any losses arising from the financial loss or theft of User Information due to unauthorized or fraudulent transactions related to Xprestimate. You are solely responsible for taking precautionary steps to protect User Information.

### **User-Generated Content**

You may generate content, written or otherwise, while using Xprestimate (“User-Generated Content”). User-Generated Content includes, but is not limited to, any communications, images, photos, videos, sounds, and all the material, data and information that you upload or transmit through Xprestimate. You acknowledge and agree that User-Generated Content may be used, reproduced, displayed, modified, deleted, added to, adapted, and published by NJM (for example, in product marketing campaigns). You grant NJM, including its affiliates, agents, third party partners and successors, a worldwide, irrevocable, transferrable, sub-licensable, fully-paid and royalty-free, and non-exclusive license to use, reproduce, display, modify, delete from, add to, adapt, publish, store and prepare derivative works from and exploit, in whole or part, the User-Generated Information in any manner or any medium now known or hereafter devised.

### **Prohibited Uses**

You may use Xprestimate and the NJM Content only for lawful purposes and in accordance with this Agreement. Xprestimate and the NJM Content shall not be used in any way that:

1. Violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the United States or other countries).
2. Harasses, abuses, stalks, threatens, defames or violates the rights of any other party (including, but not limited to, rights of publicity or other proprietary rights).
3. Is in violation of this Agreement or for fraudulent or deceptive purposes.
4. Attempts to gain unauthorized access to NJM’s user accounts.
5. Could disable, overburden, damage or impair NJM’s services or networks or interfere with any other party’s use of Xprestimate, including another party’s ability to engage in real time activities through Xprestimate.
6. Uses any robot, spider or other automatic device, process or means to access Xprestimate for any purpose, including monitoring or copying any of the material on Xprestimate.
7. Uses any manual process to monitor or copy any of the material on Xprestimate or for any other unauthorized purpose without NJM’s prior written consent.
8. Uses any device, software or routine that interferes with the proper working of Xprestimate.
9. Introduces any viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.

10. Attempts to gain unauthorized access to, interfere with, damage or disrupt any parts of Xpreestimate, the server on which Xpreestimate is stored, or any server, computer or database connected to Xpreestimate.
11. Attacks Xpreestimate via a denial-of-service attack or a distributed denial-of-service attack.
12. Otherwise attempts to interfere with the proper working of Xpreestimate.
13. Fails to comply with applicable Third Party Terms.

### **Termination**

NJM may, in its sole discretion, terminate this Agreement and/or remove the Content and/or the NJM Content at any time and for any reason. Upon termination, the rights and licenses granted to you, including your ability to access and use Xpreestimate, will immediately terminate, and you shall immediately terminate your use of and access to Xpreestimate and the NJM Content.

### **Geographic Restriction**

NJM provides Xpreestimate for use only by persons located in the United States.

### **Indemnification**

You agree to indemnify and hold harmless NJM, its affiliates, licensors and service providers, and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to your violation of this Agreement or your use of Xpreestimate, including, but not limited to, any use of the NJM Content, the Content, services and products other than as expressly authorized in this Agreement or your use of any information obtained from Xpreestimate.

### **No Warranties**

XPRESTIMATE, THE CONTENT AND THE NJM CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED. YOU ARE USING XPRESTIMATE, THE CONTENT AND THE NJM CONTENT AT YOUR OWN RISK. TO THE FULLEST EXTENT ALLOWABLE UNDER APPLICABLE LAW, NJM DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES THAT XPRESTIMATE, THE CONTENT AND THE NJM CONTENT ARE MERCHANTABLE, RELIABLE, ACCURATE, FIT FOR A PARTICULAR PURPOSE OR NEED, NON-INFRINGEMENT OR FREE OF DEFECTS OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, OR THAT THE USE OF XPRESTIMATE, THE CONTENT AND THE NJM CONTENT BY YOU IS IN COMPLIANCE WITH LAWS, OR THAT YOUR INFORMATION TRANSMITTED IN CONNECTION WITH XPRESTIMATE WILL BE SUCCESSFULLY, ACCURATELY OR SECURELY TRANSMITTED.

### **Limitation on Liability**

IN NO EVENT WILL NJM, ITS AFFILIATES, LICENSORS OR SERVICE PROVIDERS (INCLUDING BUT NOT LIMITED TO CCC), AND THEIR RESPECTIVE OFFICERS, DIRECTORS, CONTRACTORS, AGENTS, LICENSORS SUPPLIERS, SUCCESSORS AND ASSIGNS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE , OR INABILITY TO USE, XPRESTIMATE, THE CONTENT AND THE NJM CONTENT, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, AND LOSS OF DATA, WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

IN THE EVENT THAT APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, IN NO EVENT SHALL NJM, ITS AFFILIATES, LICENSORS OR SERVICE PROVIDERS (INCLUDING BUT NOT LIMITED TO CCC), AND THEIR RESPECTIVE OFFICERS, DIRECTORS, CONTRACTORS, AGENTS, LICENSORS SUPPLIERS, SUCCESSORS AND ASSIGNS, BE LIABLE FOR DAMAGES, LOSSES AND/OR CAUSES OF ACTION EXCEEDING THE AMOUNT, IF ANY, PAID BY YOU FOR USE OF XPRESTIMATE OR \$100.00, WHICHEVER IS LESS.

### **Intellectual Property**

NJM, and the NJM logo and all related names, logos, product and service names, designs and slogans are trademarks of NJM or its affiliates or licensors (the “NJM Marks”). All other names, logos, product and service names, designs and slogans in connection with Xprestimate are the trademarks of their respective owners (the “Third Party Marks”). The NJM Marks and Third Party Marks are collectively referred to as the “Marks.” The Marks may not be used by you without the prior written consent of NJM or the applicable trademark owner.

### **Choice of Law, Jurisdiction; Arbitration**

This Agreement and your use of Xprestimate are governed by and construed in accordance with the laws of the State of New Jersey to the exclusion of its conflict of laws rules. Any dispute, claim, case or controversy, whether in tort, contract, statute or otherwise, arising out of or relating to Xprestimate shall be resolved by binding arbitration. By using Xprestimate, you signify your consent to arbitration in the State of New Jersey.

**This Agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. No arbitration will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.** Any disputes regarding arbitrability, the scope of arbitration or the arbitrator’s jurisdiction will be decided by the arbitrator. The arbitration will be administered by either (a) the American

Arbitration Association under its Commercial Arbitration Rules, or (b) JAMS Dispute Resolution Experts under its Comprehensive Arbitration Rules. The arbitration will be conducted by a single arbitrator in English in New Jersey. The award of the arbitrator shall be accompanied by a statement of the reasons upon which the award is based. This Agreement is governed by the Federal Arbitration Act, and any award shall be subject to judicial confirmation in any court having jurisdiction. If any part of this paragraph is deemed illegal, unenforceable or invalid, then that portion will be severed and it shall not operate to invalidate any other portion of this paragraph.

BY AGREEING TO THIS ARBITRATION PROVISION, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING ANY RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL AS WELL AS ANY RIGHT TO PARTICIPATE IN A CLASS ACTION OR IN CLASS ACTION PROCEEDINGS.

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

### **Entire Agreement**

This Agreement and NJM's Privacy Policy constitute the sole and entire agreement between you and NJM with respect to Xprestimate and the NJM Content and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to Xprestimate and the NJM Content.

### **Modification of this Agreement**

NJM may change or modify this Agreement or any other NJM terms, conditions, or policies related to the use of Xprestimate (including those identified in this Agreement) at any time and at its sole discretion by posting revisions within Xprestimate or on NJM's website ([www.njm.com](http://www.njm.com)). Continued use of Xprestimate following the posting of these changes or modifications will constitute your acknowledgement and agreement to such changes or modifications. If you do not agree to or cannot comply with the Agreement as modified, you must stop using Xprestimate.

### **Waiver and Severability**

No waiver by NJM of any term or condition set forth in this Agreement shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of NJM to assert a right or provision under this Agreement shall not constitute a waiver of such right or provision.

If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of this Agreement will continue in full force and effect.

### **Third Party Beneficiary**

Except for NJM's service providers, licensors, or others involved in creating or providing Xprestimate (including, but not limited to, CCC), nothing herein, express or implied, shall give or be construed to give any rights hereunder to any third party.

**Assignment**

NJM may assign or delegate this Agreement and/or NJM's Privacy Policy, in whole or in part, to any person or entity at any time with or without your consent. You may not assign or delegate any rights or obligations under this Agreement or NJM's Privacy Policy without the prior written consent of NJM, and any unauthorized assignment and delegation by you is ineffective.