

## TERMS OF USE

Effective April 8, 2018

Welcome to Xclusive, operated by Spread Corporation (“us,” “we,” the “Company” or “Xclusive”).

Notice to California subscribers: You may cancel your subscription, without penalty or obligation, at any time prior to midnight of the third business day following the date you subscribed. If you subscribed using your Apple ID, refunds are handled by Apple, not Xclusive. If you wish to request a refund, please visit <https://getsupport.apple.com>. If you subscribed using your Google Play Store account or through Xclusive Premium: Contact customer support

Key changes to the Terms of Use in this version:

(i) We’ve clarified the Arbitration Agreement in Section 16 and provided an option for existing users to opt out of the retroactive application of the Arbitration Agreement.

(ii) We’ve updated our Limitation of Liability provisions in Section 15.

### **1. Acceptance of Terms of Use Agreement.**

By creating a Xclusive account or by using the Xclusive app, whether through a mobile device, mobile application or computer (collectively, the “Service”) you agree to be bound by (i) these Terms of Use, (ii) our Privacy Policy and Safety Tips, each of which is incorporated by reference into this Agreement, and (iii) any terms disclosed to you if you purchase or have purchased additional features, products or services we offer on the Service (collectively, this “Agreement”). If you do not accept and agree to be bound by all of the terms of this Agreement (other than the limited one-time opt out right for certain users provided for in Section 16), you should not use the Service. We may make changes to this Agreement and to the Service from time to time. We may do this for a variety of reasons including to reflect changes in or requirements of the law, new features, or changes in business practices. The

most recent version of this Agreement will be posted on the Service under Settings and also on <https://xclusive.app/>, and you should regularly check for the most recent version. The most recent version is the version that applies. If the changes include material changes that affect your rights or obligations, we will notify you in advance of the changes by reasonable means, which could include notification through the Service or via email. If you continue to use the Service after the changes become effective, then you agree to the revised Agreement. You agree that this Agreement shall supersede any prior agreements (except as specifically stated herein), and shall govern your entire relationship with Xclusive, including but not limited to events, agreements, and conduct preceding your acceptance of this Agreement.

## **2. Eligibility.**

You must be at least 18 years of age to create an account on Xclusive and use the Service. By creating an account and using the Service, you represent and warrant that:

- you can form a binding contract with Spread Corporation DbA Xclusive
- you are not a person who is barred from using the Service under the laws of the United States or any other applicable jurisdiction—meaning that you do not appear on the U.S. Treasury Department’s list of Specially Designated Nationals or face any other similar prohibition,
- you will comply with this Agreement and all applicable local, state, national and international laws, rules and regulations, and
- you have never been convicted of or pled no contest to a felony, a sex crime, or any crime involving violence, and that you are not required to register as a sex offender with any state, federal or local sex offender registry.

## **3. Your Account.**

In order to use Xclusive, you may sign in using your Facebook login. If you do so, you authorize us to access and use certain Facebook account information, including but not limited to your public Facebook profile and information about Facebook friends you share in common with other Xclusive users. For more

information regarding the information we collect from you and how we use it, please consult our Privacy Policy.

You are responsible for maintaining the confidentiality of your login credentials you use to sign up for Xclusive, and you are solely responsible for all activities that occur under those credentials. If you think someone has gained access to your account, please immediately contact [hello@xclusive.app](mailto:hello@xclusive.app).

#### **4. Modifying the Service and Termination.**

Xclusive is always striving to improve the Service and bring you additional functionality that you will find engaging and useful. This means we may add new product features or enhancements from time to time as well as remove some features, and if these actions do not materially affect your rights or obligations, we may not provide you with notice before taking them. We may even suspend the Service entirely, in which event we will notify you in advance unless extenuating circumstances, such as safety or security concerns, prevent us from doing so.

You may terminate your account at any time, for any reason, by following the instructions in “Settings” in the Service, **however you will need to manage your in app purchases through your mobile device platform (e.g., iTunes, Google Play) to avoid additional billing.**

Xclusive may terminate your account at any time without notice if it believes that you have violated this Agreement. Upon such termination, you will not be entitled to any refund for purchases. After your account is terminated, this Agreement will terminate, except that the following provisions will still apply to you and Xclusive: Section 5, Section 6, and Sections 13 through 20.

#### **6. Safety; Your Interactions with Other Users.**

Though Xclusive strives to encourage a respectful user experience through features like the double opt-in that only allows users to communicate if they have both indicated interest in one another, **it is not responsible for the conduct of any user on or off of the Service. You agree to use caution in all interactions with other users, particularly if you decide to**

communicate off the Service or meet in person. In addition, you agree to review and follow Xclusive's Safety Tips prior to using the Service. You agree that you will not provide your financial information (for example, your credit card or bank account information), or wire or otherwise send money, to other users.

**YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH OTHER USERS. YOU UNDERSTAND THAT XCLUSIVE DOES NOT CONDUCT CRIMINAL BACKGROUND CHECKS ON ITS USERS OR OTHERWISE INQUIRE INTO THE BACKGROUND OF ITS USERS. XCLUSIVE MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS. XCLUSIVE RESERVES THE RIGHT TO CONDUCT – AND YOU AGREE THAT XCLUSIVE MAY CONDUCT - ANY CRIMINAL BACKGROUND CHECK OR OTHER SCREENINGS (SUCH AS SEX OFFENDER REGISTER SEARCHES) AT ANY TIME USING AVAILABLE PUBLIC RECORDS.**

## **7. Rights Xclusive Grants You.**

Xclusive grants you a personal, worldwide, royalty-free, non-assignable, nonexclusive, revocable, and non-sublicensable license to access and use the Service. This license is for the sole purpose of letting you use and enjoy the Service's benefits as intended by Xclusive and permitted by this Agreement.

Therefore, you agree not to:

- use the Service or any content contained in the Service for any commercial purposes without our written consent.
- copy, modify, transmit, create any derivative works from, make use of, or reproduce in any way any copyrighted material, images, trademarks, trade names, service marks, or other intellectual property, content or proprietary information accessible through the Service without Xclusive's prior written consent.
- express or imply that any statements you make are endorsed by Xclusive.

- use any robot, bot, spider, crawler, scraper, site search/retrieval application, proxy or other manual or automatic device, method or process to access, retrieve, index, “data mine,” or in any way reproduce or circumvent the navigational structure or presentation of the Service or its contents.
- use the Service in any way that could interfere with, disrupt or negatively affect the Service or the servers or networks connected to the Service.
- upload viruses or other malicious code or otherwise compromise the security of the Service.
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted to or through the Service.
- “frame” or “mirror” any part of the Service without Xclusive’s prior written authorization.
- use meta tags or code or other devices containing any reference to Xclusive or the Service (or any trademark, trade name, service mark, logo or slogan of Xclusive) to direct any person to any other website for any purpose.
- modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Service, or cause others to do so.
- use or develop any third-party applications that interact with the Service or other users’ Content or information without our written consent.
- use, access, or publish the Xclusive application programming interface without our written consent.
- probe, scan or test the vulnerability of our Service or any system or network.
- encourage or promote any activity that violates this Agreement.

The Company may investigate and take any available legal action in response to illegal and/ or unauthorized uses of the Service, including termination of your account.

Any software that we provide you may automatically download and install upgrades, updates, or other new features. You may be able to adjust these automatic downloads through your device's settings.

## **8. Rights you Grant Xclusive.**

By creating an account, you grant to Xclusive a worldwide, transferable, sub-licensable, royalty-free, right and license to host, store, use, copy, display, reproduce, adapt, edit, publish, modify and distribute information you authorize us to access from Facebook, as well as any information you post, upload, display or otherwise make available (collectively, "post") on the Service or transmit to other users (collectively, "Content"). Xclusive's license to your Content shall be non-exclusive, except that Xclusive's license shall be exclusive with respect to derivative works created through use of the Service. For example, Xclusive would have an exclusive license to screenshots of the Service that include your Content. In addition, so that Xclusive can prevent the use of your Content outside of the Service, you authorize Xclusive to act on your behalf with respect to infringing uses of your Content taken from the Service by other users or third parties. This expressly includes the authority, but not the obligation, to send notices pursuant to 17 U.S.C. § 512(c)(3) (i.e., DMCA Takedown Notices) on your behalf if your Content is taken and used by third parties outside of the Service. Our license to your Content is subject to your rights under applicable law (for example laws regarding personal data protection to the extent any Content contains personal information as defined by those laws) and is for the limited purpose of operating, developing, providing, and improving the Service and researching and developing new ones. You agree that any Content you place or that you authorize us to place on the Service may be viewed by other users and may be viewed by any person visiting or participating in the Service (such as individuals who may receive shared Content from other Xclusive users).

You agree that all information that you submit upon creation of your account, including information submitted from your Facebook account, is accurate and

truthful and you have the right to post the Content on the Service and grant the license to Xclusive above.

You understand and agree that we may monitor or review any Content you post as part of a Service. We may delete any Content, in whole or in part, that in our sole judgment violates this Agreement or may harm the reputation of the Service.

When communicating with our customer care representatives, you agree to be respectful and kind. If we feel that your behavior towards any of our customer care representatives or other employees is at any time threatening or offensive, we reserve the right to immediately terminate your account.

In consideration for Xclusive allowing you to use the Service, you agree that we, our affiliates, and our third-party partners may place advertising on the Service. By submitting suggestions or feedback to Xclusive regarding our Service, you agree that Xclusive may use and share such feedback for any purpose without compensating you.

You agree that Xclusive may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary, such as to: (i) comply with legal process; (ii) enforce this Agreement; (iii) respond to claims that any Content violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property or personal safety of the Company or any other person.

## 9. Community Rules.

By using the Service, you agree that you will not:

- use the Service for any purpose that is illegal or prohibited by this Agreement.
- use the Service for any harmful or nefarious purpose.
- use the Service in order to damage Xclusive.
- violate our Community Guidelines, as updated from time to time.

- spam, solicit money from or defraud any users.
- impersonate any person or entity or post any images of another person without his or her permission.
- bully, “stalk,” intimidate, assault, harass, mistreat or defame any person.
- post any Content that violates or infringes anyone’s rights, including rights of publicity, privacy, copyright, trademark or other intellectual property or contract right.
- post any Content that is hate speech, threatening, sexually explicit or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.
- post any Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual.
- solicit passwords for any purpose, or personal identifying information for commercial or unlawful purposes from other users or disseminate another person’s personal information without his or her permission.
- use another user’s account.
- create another account if we have already terminated your account, unless you have our permission.

Xclusive reserves the right to investigate and/ or terminate your account without a refund of any purchases if you have violated this Agreement, misused the Service or behaved in a way that Xclusive regards as inappropriate or unlawful, including actions or communications that occur on or off the Service.

#### 10. Other Users’ Content.

Although Xclusive reserves the right to review and remove Content that violates this Agreement, such Content is the sole responsibility of the user who posts it, and Xclusive cannot guarantee that all Content will comply with this Agreement. If you see Content on the Service that violates this Agreement, please report it within the Service or via [hello@xclusive.app](mailto:hello@xclusive.app).

#### 11. Purchases.

**In App Purchases.** From time to time, Xclusive may offer products and services for purchase (“in app purchases”) through iTunes, Google Play or



other application platforms authorized by Xclusive (each, a “Software Store”). If you choose to make an in app purchase, you will be prompted to enter details for your account with your Software Store (“your IAP Account”), and your IAP Account will be charged for the in app purchase in accordance with the terms disclosed to you at the time of purchase as well as the general terms for in app purchases that apply to your IAP Account. Some Software Stores may charge you sales tax, depending on where you live. If you purchase an auto-recurring periodic subscription through an in app purchase, your IAP Account will continue to be billed for the subscription until you cancel. After your initial subscription commitment period, and again after any subsequent subscription period, your subscription will automatically continue for an additional equivalent period, at the price you agreed to when subscribing. **If you do not wish your subscription to renew automatically, or if you want to change or terminate your subscription, you will need to log in to your IAP account and follow instructions to cancel your subscription, even if you have otherwise deleted your account with us or if you have deleted the Xclusive application from your device.** Deleting your account on Xclusive or deleting the Xclusive application from your device does not cancel your subscription; Xclusive will retain all funds charged to your IAP Account until you cancel your subscription through your IAP Account.

### **Xclusive Online Purchases.**

If you choose to make a purchase through Xclusive Premium, you agree to pay Xclusive all charges at the prices displayed to you for the service(s) you’ve selected as well as any sales or similar taxes that may be imposed on your payments, and you authorize Xclusive to charge your chosen payment provider (your “Payment Method”). Xclusive may correct any billing errors or mistakes that it makes even if it has already requested or received payment. If you initiate a chargeback or otherwise reverse a payment made with your Payment Method, Xclusive may terminate your account immediately in its sole discretion.

If you purchase a subscription through Xclusive Online, your subscription will continue indefinitely until cancelled by you. After your initial subscription commitment period, and again after any subsequent subscription period, your subscription will automatically continue for an additional equivalent period, at the price you agreed to when subscribing, until you cancel. You agree that your account will be subject to this automatic renewal feature. If you do not wish your account to renew automatically, or if you want to change or terminate your subscription, please log in and go to “Options” on Xclusive app and follow the instructions. If you cancel your subscription, you may use your subscription until the end of your then-current subscription term, and your subscription will not be renewed after your then-current term expires.

You may edit your Payment Method information by visiting Xclusive app and going to “Options.” If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not edit your Payment Method information or cancel your subscription, you remain responsible for any uncollected amounts and authorize us to continue billing the Payment Method, as it may be updated. This may result in a change to your payment billing dates. In addition, you authorize us to obtain updated or replacement expiration dates and card numbers for your credit or debit card as provided by your credit or debit card issuer. The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method. All transactions will appear on your statement as Spread Corporation.

**Refunds.** Generally, all charges for purchases are nonrefundable, and there are no refunds or credits for partially used periods. We may make an exception if a refund for a subscription offering is requested within fourteen days of the transaction date, or if the laws applicable in your jurisdiction provide for refunds.

For subscribers residing in Arizona, California, Connecticut, Illinois, Iowa, Minnesota, New York, North Carolina, Ohio and Wisconsin, the terms below apply:

You may cancel your subscription, without penalty or obligation, at any time prior to midnight of the third business day following the date you subscribed. In the event that you die before the end of your subscription period, your estate shall be entitled to a refund of that portion of any payment you had made for your subscription which is allocable to the period after your death. In the event that you become disabled (such that you are unable to use the services of Xclusive) before the end of your subscription period, you shall be entitled to a refund of that portion of any payment you had made for your subscription which is allocable to the period after your disability by providing the company notice in the same manner as you request a refund as described below.

Subscriptions payments are FINAL AND NON-REFUNDABLE.

To request a refund:

If you subscribed using your Apple ID, refunds are handled by Apple, not Xclusive. To request a refund, go to iTunes, click on your Apple ID, select "Purchase history," find the transaction and hit "Report Problem". You can also submit a request at <https://getsupport.apple.com>.

If you subscribed using your Google Play Store account or through Xclusive Online: please contact customer support with your order number for the Google Play Store (you can find the order number in the order confirmation email or by logging in to Google Wallet) or Xclusive app (you can find this on your confirmation email). You may also mail or deliver a signed and dated notice which states that you, the buyer, are canceling this agreement, or words of similar effect. Please also include the email address or telephone number associated with your account along with your order number.

## **12. Notice and Procedure for Making Claims of Copyright Infringement.**

If you believe that your work has been copied and posted on the Service in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- a description of the copyrighted work that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Service (and such description must be reasonably sufficient to enable us to find the alleged infringing material);
- your contact information, including address, telephone number and email address;
- a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Notice of claims of copyright infringement should be provided to the Company's Copyright Agent via email to [support@spreadcorporation.com](mailto:support@spreadcorporation.com), or via mail to the following address:

Copyright Compliance Department c/o Spread Corporation 600 Wilshire Blvd  
#500, Los Angeles, CA 90017

Xclusive will terminate the accounts of repeat infringers.

### **13. Disclaimers.**

XCLUSIVE PROVIDES THE SERVICE ON AN "AS IS" AND "AS AVAILABLE" BASIS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, GRANTS NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICE (INCLUDING ALL CONTENT CONTAINED THEREIN), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. XCLUSIVE DOES NOT REPRESENT OR

WARRANT THAT (A) THE SERVICE WILL BE UNINTERRUPTED, SECURE OR ERROR FREE, (B) ANY DEFECTS OR ERRORS IN THE SERVICE WILL BE CORRECTED, OR (C) THAT ANY CONTENT OR INFORMATION YOU OBTAIN ON OR THROUGH THE SERVICE WILL BE ACCURATE. XCLUSIVE TAKES NO RESPONSIBILITY FOR ANY CONTENT THAT YOU OR ANOTHER USER OR THIRD PARTY POSTS, SENDS OR RECEIVES THROUGH THE SERVICE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS ACCESSED AT YOUR OWN DISCRETION AND RISK. XCLUSIVE DISCLAIMS AND TAKES NO RESPONSIBILITY FOR ANY CONDUCT OF YOU OR ANY OTHER USER, ON OR OFF THE SERVICE.

#### **14. Third Party Services.**

The Service may contain advertisements and promotions offered by third parties and links to other web sites or resources. Xclusive is not responsible for the availability (or lack of availability) of such external websites or resources. If you choose to interact with the third parties made available through our Service, such party's terms will govern their relationship with you. Xclusive is not responsible or liable for such third parties' terms or actions.

#### **15. Limitation of Liability.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL XCLUSIVE, ITS AFFILIATES, EMPLOYEES, LICENSORS OR SERVICE PROVIDERS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM: (I) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICE; (II) THE CONDUCT OR CONTENT OF OTHER USERS OR THIRD PARTIES ON, THROUGH OR FOLLOWING USE OF THE SERVICE; OR (III) UNAUTHORIZED ACCESS, USE OR

ALTERATION OF YOUR CONTENT, EVEN IF XCLUSIVE HAS BEEN ADVISED AT ANY TIME OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL XCLUSIVE AGGREGATE LIABILITY TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE SERVICE OR THIS AGREEMENT EXCEED THE AMOUNT PAID, IF ANY, BY YOU TO XCLUSIVE DURING THE TWENTY-FOUR (24) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT YOU FIRST FILE A LAWSUIT, ARBITRATION OR ANY OTHER LEGAL PROCEEDING AGAINST XCLUSIVE, WHETHER IN LAW OR IN EQUITY, IN ANY TRIBUNAL. THE DAMAGES LIMITATION SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE APPLIES (i) REGARDLESS OF THE GROUND UPON WHICH LIABILITY IS BASED (WHETHER DEFAULT, CONTRACT, TORT, STATUTE, OR OTHERWISE), (ii) IRRESPECTIVE OF THE TYPE OF BREACH OF OBLIGATIONS, AND (iii) WITH RESPECT TO ALL EVENTS, THE SERVICE, AND THIS AGREEMENT.

THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION 15 SHALL APPLY EVEN IF YOUR REMEDIES UNDER THIS AGREEMENT FAIL WITH RESPECT TO THEIR ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.

## **16. Retroactive and Prospective Arbitration, Class-Action Waiver, and Jury Waiver.**

Except where prohibited by applicable law:

1. The exclusive means of resolving any dispute or claim arising out of or relating to this Agreement (including any alleged breach thereof), or the Service, regardless of the date of accrual and including past, pending, and future claims, shall be BINDING ARBITRATION administered by the American Arbitration Association under the Consumer Arbitration Rules.

The one exception to the exclusivity of arbitration is that you have the right to bring an individual claim against Xclusive in a small claims court of competent jurisdiction in the county in which you reside, or in Los Angeles County, California. Such arbitration shall be conducted by written submissions only, unless either you or Xclusive elect to invoke the right to an oral hearing before the Arbitrator. But whether you choose arbitration or small claims court, you agree that you will not under any circumstances commence, maintain, or participate in any class action, class arbitration, or other representative action or proceeding against Xclusive.

2. By accepting this Agreement, you agree to the Arbitration Agreement in this Section 16 (subject to existing users' limited one-time right to opt out within thirty (30) days, discussed below). In doing so, BOTH YOU AND XCLUSIVE GIVE UP THE RIGHT TO GO TO COURT to assert or defend any claims between you and Xclusive (except for matters that may be properly taken to a small claims court and are within such court's jurisdiction). YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION OR OTHER CLASS PROCEEDING, including, without limitation, any past, pending or future class actions.
3. If you assert a claim against Xclusive outside of small claims court, your rights will be determined by a NEUTRAL ARBITRATOR, NOT A JUDGE OR JURY, and the arbitrator shall determine all claims and all issues regarding the arbitrability of the dispute. The same is true for Xclusive. Both you and Xclusive are entitled to a fair hearing before the arbitrator. The arbitrator can generally grant the relief that a court can, but you should note that arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons. For details on the arbitration process, see our Arbitration Procedures.
4. The Jurisdiction and Venue provisions in Sections 17 and 18 are incorporated and are applicable to this Arbitration Agreement.

5. As you decide whether to agree to this Arbitration Agreement, here are some important considerations:

- Arbitration is a process of private dispute resolution that does not involve the civil courts, a civil judge or a jury. Instead, the parties' dispute is decided by a private arbitrator selected by the parties under the Consumer Arbitration Rules of the American Arbitration Association. Arbitration does not limit or affect the legal claims you as an individual may bring against Xclusive. Agreeing to arbitration will only affect where those claims may be brought and how they will be resolved.
- Arbitration is generally considered to be a more rapid dispute resolution process than the judicial system, but that is not always the case. The Arbitrator will typically determine whether Xclusive or you will be required to pay or split the cost of any arbitration with Xclusive, based on the circumstances presented.
- IMPORTANT: THERE ARE NOW, AND MAY BE IN THE FUTURE, LAWSUITS AGAINST XCLUSIVE ALLEGING CLASS AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF INCLUDING BUT NOT LIMITED TO CLASS ACTIONS DESCRIBED IN THIS SECTION 16, WHICH IF SUCCESSFUL, COULD POTENTIALLY RESULT IN SOME MONETARY OR OTHER RECOVERY TO YOU, IF YOU ELECT TO OPT OUT OF THE RETROACTIVE APPLICATION OF THIS ARBITRATION AGREEMENT. THE MERE EXISTENCE OF SUCH CLASS AND/OR REPRESENTATIVE LAWSUITS, HOWEVER, DOES NOT MEAN THAT SUCH LAWSUITS WILL ULTIMATELY SUCCEED, OR, EVEN IF SUCCESSFUL, THAT YOU WOULD BE ENTITLED TO ANY RECOVERY.
- You will be precluded from bringing any class or representative action against Xclusive, unless you timely opt out of the retroactive application of this Arbitration Agreement, and you will also be precluded from participating in any recovery resulting from any class or representative action brought against Xclusive, in each case provided you are not already bound by an arbitration



agreement and class action waiver previously agreed to with Xclusive.

6. WHETHER TO AGREE TO THIS ARBITRATION AGREEMENT IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE, AND YOU SHOULD TAKE CARE TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS — INCLUDING BUT NOT LIMITED TO AN ATTORNEY — REGARDING THE CONSEQUENCES OF YOUR DECISION, JUST AS YOU WOULD WHEN MAKING ANY OTHER IMPORTANT BUSINESS OR LIFE DECISION.
7. **Existing Users Limited One-Time Right To Opt Out Of The Retroactive Application of the Arbitration Agreement**
8. **NOTE: THIS OPT OUT SECTION DOES NOT APPLY TO NEW USERS (E.G., USERS WHO CREATE AN ACCOUNT AFTER May 8, 2018) OR EXISTING USERS WHO MAKE A PURCHASE AFTER May 8, 2018 OR ANY CLAIMS OR DISPUTES ARISING AFTER May 8, 2018.**
9. IF YOU ARE AN EXISTING USER OF XCLUSIVE, AND IF YOU DO NOT AGREE TO BE SUBJECT TO THIS ARBITRATION AGREEMENT ON A RETROACTIVE BASIS, YOU MUST OPT OUT OF THE RETROACTIVE APPLICATION OF THIS ARBITRATION AGREEMENT **WITHIN THE NEXT 30 DAYS**, IN THE FOLLOWING SPECIFIED MANNER:
10. By sending an e-mail to [support@spreadcorporation.com](mailto:support@spreadcorporation.com) within the next 30 days. The e-mail opt out must contain the following to be effective: your full name, address, email address and/ or phone number associated with your Xclusive account, and a statement that you are opting out of the Retroactive Application of this Arbitration Agreement.
11. Should you not opt out of the retroactive application of this Arbitration Agreement within the next 30 days, you and Xclusive shall be bound by the terms of this Arbitration Agreement, including its retroactive effect. You have the right to consult with counsel of your choice (at your cost) concerning this Arbitration Agreement. **IF YOU OPT OUT OF THE RETROACTIVE EFFECT OF THIS ARBITRATION AGREEMENT, YOU WILL STILL BE SUBJECT TO AND BOUND BY ANY PRIOR**

**ARBITRATION AGREEMENTS/ PROVISIONS YOU PREVIOUSLY AGREED TO WITH XCLUSIVE AS WELL AS THIS ARBITRATION AGREEMENT ON A GOING FORWARD BASIS.**

**17. Governing Law.**

Except where our arbitration agreement is prohibited by law, the laws of California, U.S.A., without regard to its conflict of laws rules, shall apply to any disputes arising out of or relating to this Agreement, the Service, or your relationship with Xclusive. Notwithstanding the foregoing, the Arbitration Agreement in Section 16 above shall be governed by the Federal Arbitration Act.

**18. Venue.**

Except for claims that may be properly brought in a small claims court of competent jurisdiction in the county in which you reside or in Los Angeles County, California, all claims arising out of or relating to this Agreement, to the Service, or to your relationship with Xclusive that for whatever reason are not submitted to arbitration will be litigated exclusively in the federal or state courts of Los Angeles County, California, U.S.A. You and Xclusive consent to the exercise of personal jurisdiction of courts in the State of California and waive any claim that such courts constitute an inconvenient forum.

**19. Indemnity by You.**

You agree, to the extent permitted under applicable law, to indemnify, defend and hold harmless Xclusive, our affiliates, and their and our respective officers, directors, agents, and employees from and against any and all complaints, demands, claims, damages, losses, costs, liabilities and expenses, including attorney's fees, due to, arising out of, or relating in any way to your access to or use of the Service, your Content, or your breach of this Agreement.

**20. Entire Agreement; Other.**

This Agreement, along with the Privacy Policy, the Safety Tips, and any terms disclosed to you if you purchase or have purchased additional features, products or services we offer on the Service, contains the entire agreement between you and Xclusive regarding your relationship with Xclusive and the use of the Service, with the following exception: anyone who opted out of the retroactive application of Section 16 is still subject to and bound by any prior agreements to arbitrate with Xclusive as well as this agreement to arbitrate on a going forward basis. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. The failure of Xclusive to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. You agree that your Xclusive account is non-transferable and all of your rights to your account and its Content terminate upon your death. No agency, partnership, joint venture, fiduciary or other special relationship or employment is created as a result of this Agreement and you may not make any representations on behalf of or bind Xclusive in any manner.