

Plume Terms of Service for Plume Services

Last updated: December 20, 2022

Plume Design, Inc. (**Plume** or **we**) offers cloud-based software services, mobile applications, hardware and other related services that deliver smart home and enterprise-grade small business services built on self-optimizing Wi-Fi technology and related business intelligence services (together, **Plume Services**). Plume offers the Plume Services subject to these Plume Terms of Service (**Plume Terms**).

For the Plume Services:

- You are a “**Customer**” if you are the legal or natural person that subscribes to or orders the Plume Services.
- You are a “**User**” if you are authorized by Customer to access and use the Plume Services under Plume’s agreement with the Customer. If you are the Customer and a natural person, then you also are a User.

When used in these Plume Terms, “**you**” means (as context dictates) the Customer or User that uses the Plume Services.

PLEASE READ THESE PLUME TERMS CAREFULLY. THESE PLUME TERMS INCLUDE IMPORTANT INFORMATION ABOUT YOUR RELATIONSHIP WITH PLUME AND HOW DISPUTES BETWEEN US ARE RESOLVED.

BY CLICKING A BUTTON OR CHECKING A BOX INDICATING ACCEPTANCE OF THESE PLUME TERMS OR OTHERWISE AFFIRMATIVELY ACTIVATING OR USING THE PLUME SERVICES, YOU AFFIRM TO PLUME THAT:

- YOU ARE ABLE AND LEGALLY COMPETENT TO ENTER INTO CONTRACTS
- YOU UNDERSTAND AND AGREE TO THESE PLUME TERMS, THE PLUME PRIVACY POLICY AND THE PLUME ACCEPTABLE USE POLICY

IF YOU ARE ACCEPTING THESE PLUME TERMS ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT TO PLUME THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THESE PLUME TERMS. IF THE YOU DO NOT HAVE THE AUTHORITY OR DO NOT AGREE WITH THESE PLUME TERMS, YOU ARE NOT AUTHORIZED TO USE THE PLUME SERVICES.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 13, these Plume Terms contains provisions that limit our liability to you and require you to resolve any dispute with us through arbitration on an individual basis and not as part of any class or representative action. You and Plume are each waiving the right to a trial by jury. Please see “**Agreement to Arbitrate**” (Section 13) below for more information.

1. KEY DEFINITIONS

For your convenience, many of the capitalized terms that we use in these Plume Terms are defined in this Section 1:

- **Acceptable Use Policy** means Plume's rules for acceptable use of the Plume Services, as updated from time to time.
- **Customer and User Data** means data (including Personal Information, as defined in the [Plume Privacy Policy](#) in any form or medium that are transmitted to or through the Plume Services or otherwise made available by Customer and/or Users in connection with the Plume Services but *excluding* Services Data.
- **Documentation** means all manuals, instructions and other materials that Plume provides or makes available to Customers and Users in any form or medium and that describe the functionality, components, features and/or requirements of the Plume Services, as updated from time to time.
- **Mobile Apps** means Plume's Mobile Apps used in conjunction with the Plume Services.
- **Plume Partners** means businesses that offer equipment for and/or subscriptions to the Plume Services, including communication and internet service providers, resellers and other service providers that help make the Plume Services available to subscribers.
- **Plume Products** means Plume's [SuperPods](#) and related equipment sold by or on behalf of Plume.
- **Product Software** means the software embedded in the Plume Products and equipment made available by Plume Partners, including Updates and Enhancements (defined in Section 7).
- **Services Data** means data that are generated by or derived from Customer's and/or Users' use of the Plume Services.
- **Third-Party Materials** means technology and services provided by a third party that interoperate with or otherwise support the Plume Services, such as security and hosting service providers.
- **User Integrated Services** means third-party software and other services that a Customer or User chooses to integrate with the Plume Services pursuant to Customer's or User's account with the provider of those services.

2. HOW THESE PLUME TERMS APPLIES

These Plume Terms apply to the Plume Services, including Mobile Apps. After you initially accept these Plume Terms, you agree to the latest version of these Plume Terms (as updated in accordance with Section 7.4 below) when you access and use the Plume Services. Certain Plume Services may require that you agree to additional legal terms (**Service Specific Terms**). Plume's Service Specific Terms include:

[Service Specific Terms for the HomePass Services](#)

[Service Specific Terms for WorkPass Services](#)

[Service Specific Terms for the Uprise Services](#)

If the Plume Service that you use is not listed above, please visit <https://www.plume.com/legal/> and/or send an email to support@plume.com.

If any term of these Plume Terms conflicts with any of the Service Specific Terms, then the Service Specific Terms control with respect to the Plume Services to which they relate.

Plume may have agreements with Plume Partners that contain terms applicable to certain customers and users that are different from these Plume Terms. The Plume Partner's agreement applies instead of these Plume Terms *only when* expressly presented within the Plume Services and only to the extent of any conflict or inconsistency.

The Plume Services also include software offered under an open source license with use requirements that supplement these Plume Terms. For more information, please contact support@plume.com.

These Plume Terms do not apply to purchases made in Plume's online store, to the Plume website or to the Product Software. Please see Plume's [Terms of Sale](#) for the terms and conditions applicable to Plume's online store. The [End User License Agreement](#) governs the Product Software.

If you have a question about whether these Plume Terms apply to you, please contact support@plume.com.

3. ACCESSING THE PLUME SERVICES

3.1 Accounts. Certain Services require that you create an account. To create an account, you must (i) choose a username and password (**Account Credentials**); (ii) provide true, accurate, current and complete information and maintain that information as accurate, current and complete; and (iii) use appropriate safeguards to maintain the confidentiality and security of Account Credentials. You are solely responsible for using appropriate safeguards to maintain the confidentiality and security of your Account Credentials, and you accept responsibility for all activities that occur using your Account Credentials.

Plume may, in its sole discretion, suspend or terminate Account Credentials and access to the Plume Services if account information is inaccurate, out of date or incomplete (or if Plume reasonably believes it is). If you believe that your account is no longer secure, then you must immediately notify Plume at support@plume.com.

Plume reserves the right to limit the number of accounts that are created from a single device and the number of devices associated with an account.

3.2 Right to Use Plume Services. Subject to your complete and ongoing compliance with these Plume Terms and applicable Service Specific Terms, Plume and its licensors

grant you the limited, non-exclusive, non-transferable, non-sub-licensable and revocable rights to: (a) access and use the Plume Services and Documentation; (b) install and use one object code copy of a lawfully-obtained Mobile App on a mobile device that you own or control; and (c) access and use the Plume Services. Plume reserves all rights that are not expressly granted in these Plume Terms. Plume makes the Plume Services available in compliance with laws applicable to Plume and not necessarily in compliance with laws applicable to your specific use of the Plume Services.

The Plume Services may include software offered under an open source license with use requirements that supplement these Plume Terms.

3.3 Compatible Equipment and Software Requirement. Use of the Plume Services requires use of compatible devices, Internet access and equipment. The latest Updates to or version of required software is necessary for certain transactions or features to properly function. You agree that meeting these requirements is your responsibility.

3.4 Mobile Apps.

3.4.1 Apple App Store Requirements. If you access and download a Mobile App from Apple's App Store, you acknowledge and agree that the Plume Terms are concluded between you and Plume only, and not Apple. Plume, not Apple, is solely responsible for Plume's Mobile Apps and content thereof. Your use of the Mobile Apps must comply with the App Store Plume Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Mobile Apps. If a Mobile App fails to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price for the Mobile App to you and, to the maximum extent permitted by law, Apple will have no other warranty obligation whatsoever with respect to the Mobile App. As between Plume and Apple, all other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Plume. You acknowledge that, as between Plume and Apple, Apple is not responsible for addressing any claim that you have or any claim of any third party relating to the Mobile Apps or your possession and use of Plume's Mobile Apps. These claims include but are not limited to: (i) product liability claims; (ii) any claim that a Mobile App failed to conform to any applicable legal or regulatory requirement; and (iii) any claim arising under consumer protection or similar legislation. You acknowledge that, in the event of any third-party claim that a Mobile App or your possession and use of a Mobile App infringes a third party's intellectual property rights, as between Plume and Apple, Plume, not Apple, is solely responsible for the investigation, defense, settlement and discharge of the intellectual property infringement claim to the extent required by these Plume Terms. You and Plume acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries of these Plume Terms as related to your license of the Mobile Apps and that, upon your acceptance of these Plume Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Plume Terms as related to your license of the Mobile Apps against you as a third-party beneficiary thereof. Without

limiting any other terms of these Plume Terms, you must comply with all applicable third-party terms when using the Mobile Apps.

3.4.2 Other App Platforms Requirements. You acknowledge and agree that the availability of the Mobile Apps downloadable via Google Play or another online store (**App Platform**) as part of the Plume Services depend on the terms of the App Platform from which you access the Mobile App. Plume, not the App Platform, is solely responsible for Plume's Mobile Apps and its content, maintenance, support services and warranty therefor, and for addressing any claim relating thereto (e.g., product liability, legal compliance or intellectual property infringement). You also agree to pay all fees (if any) charged by the App Platform in connection with the Mobile Apps. You agree to comply with, and your license to use the Mobile Apps is conditioned upon your compliance with, all applicable third-party terms of agreement when using the Plume Services. You acknowledge that the App Platform (and its subsidiaries) are third-party beneficiaries of these Plume Terms and will have the right to enforce these Plume Terms as related to your license of the Mobile Apps against you as a third-party beneficiary thereof. The App Platform is not and will not be responsible for, and will not have any liability whatsoever under these Plume Terms.

4. YOUR RESPONSIBILITIES.

You are solely responsible for:

- Compliance with these Plume Terms and the Acceptable Use Policy, including use of the Plume Services and decisions and actions based on use of the Plume Services by Users;
- The lawfulness of Customer and User Data, Feedback and User Integrated Services;
- Fees, including internet connection or mobile fees, incurred when accessing the Plume Services, if you are the Customer;
- Your compliance with all applicable laws and regulations related to use of the Plume Services and, if you are the Customer, for Users, including obtaining all necessary consents, honoring all opt-out requests from Users with respect to the Plume Services and the quality, integrity and lawfulness of all Customer and User Data and User Integrated Services;
- The security and use of Access Credentials and all activities that occur through those Account Credentials. *(Please immediately notify Plume at support@plume.com if you detect or suspect unauthorized activity.);*
- Use of reasonable and appropriate administrative, physical and technical safeguards to protect against unauthorized access to or use of the Plume Services;
- Reasonably cooperating with Plume when Plume believes your use of the Plume Services violates law or the Acceptable Use Policy, Plume Privacy Policy or any other part of these Plume Terms; and
- The hardware and other equipment and internet connection through which you access and use the Plume Services (including operation, maintenance and management) and all access to and use of the Plume Services directly or indirectly through that equipment and internet connection, whether or not authorized.

5. CONDITIONS OF USE

5.1 Acceptable Use. Without limiting your obligations under the Acceptable Use Policy, you understand and agree that you will not (and will use best efforts not to enable a third party to):

- copy, modify, frame, mirror or create derivative works or improvements of the Plume Services;
- rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any of the Plume Services to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Plume Services, in whole or in part;
- bypass or breach any security device or protection used for the Plume Services or access or use the Plume Services other than through the use of your own valid Access Credentials;
- input, upload, transmit or otherwise provide to or through the Plume Services any Customer and User Data or other information or materials that are unlawful or injurious to Plume or any third party or contain, transmit or activate any virus, worm, malware or other malicious computer code;
- damage, destroy, disrupt, disable, impair or otherwise impede or harm in any manner the Plume Services or Plume's provision of the Plume Services, in whole or in part;
- remove, delete, alter or obscure any copyright, trademark, patent or other intellectual property or proprietary rights notice from any of the Plume Services or Third-Party Materials, including any copy thereof;
- access or use the Plume Services or Third-Party Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other customer) or that violates any applicable law;
- use or permit use of the Plume Services to transmit content or code that violates the Acceptable Use Policy;
- access or use the Plume Services for purposes of competitive analysis of the Plume Services, the development, provision or use of a competing product or service or any other purpose that is to Plume's detriment or commercial disadvantage; or
- otherwise access or use the Plume Services beyond the scope of the authorization expressly granted under these Plume Terms.

The Plume Services are not targeted for use by children. Customer is responsible for obtaining verifiable consent from the parent or legal guardian of any User who is under age of majority.

5.2 Disclosure of Customer and User Data. Customer and Users agree that Plume may disclose Customer and User Data if (i) Plume believes that disclosure is reasonably necessary to comply with any law or a request from a government regulator

or communications service provider that Plume believes in good faith is lawful, (ii) to enforce our agreements and policies, (iii) to protect the security or integrity of the Plume Services, (iv) to protect ourselves, our other customers or the public from harm or illegal activities, or (v) to respond to an emergency that Plume believes in good faith requires us to disclose Customer and User Data.

5.3 Monitoring. Plume does not control how Users use the Plume Services or data that Users submit to or transmit through the Plume Services. You understand that, when using the Plume Services, you may be exposed to Customer and User Data from a variety of sources and acknowledge that the Customer and User Data may be inaccurate, offensive, indecent or objectionable.

You are solely responsible for your Customer and User Data and the consequences of providing Customer and User Data via the Plume Services. Plume disclaims all liability that arises in connection with Customer and User Data. You hereby waive any legal or equitable right or remedy you may have against Plume with respect to Customer and User Data.

You understand that Plume may, at any time and without prior notice, screen, remove, edit or block any Customer and User Data that in Plume's sole judgment violates these Plume Terms or is otherwise objectionable. You acknowledge and agree that Plume reserves the right to, and may from time to time, monitor data transmitted or received through the Plume Services for operational and other lawful purposes. If at any time Plume chooses to monitor the Plume Services, Plume assumes no additional responsibility or liability to you or any third party.

6. INTELLECTUAL PROPERTY RIGHTS.

6.1 Ownership of Customer and User Data. You are and will remain the sole and exclusive owner of all right, title and interest in and to your Customer and User Data, including all intellectual property rights relating thereto. You hereby irrevocably grant to Plume all rights and permissions in or relating to Customer and User Data that Plume determines necessary or useful to perform the Plume Services, enforce these Plume Terms or otherwise exercise Plume's rights and perform Plume's obligations. By providing your Customer and User Data to or through the Plume Services to other users of the Plume Services, you grant those users a non-exclusive license to access and use your Customer and User Data as permitted by these Plume Terms and the functionality of the Plume Services.

You expressly acknowledge that Customer and User Data excludes Services Data. In furtherance of the foregoing, you hereby unconditionally and irrevocably grant to Plume all right, title and interest you may have in and to Services Data.

6.2 Ownership of Plume Services. The Plume Services are owned and operated by Plume. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Plume Services provided by Plume (**Plume Content**) are protected by

intellectual property and other laws. All Plume Content included in the Plume Services are the property of Plume or its third-party licensors. Except as expressly authorized by these Plume Terms or otherwise by Plume, you may not use the Plume Content. Plume reserves all rights to the Plume Content not granted expressly in these Plume Terms.

6.3 Ownership of Third-Party Materials. With respect to Third-Party Materials, the applicable third party owns all right, title and interest, including all intellectual property rights, in and to Third-Party Materials. You have no right, license or authorization with respect to Third-Party Materials except as expressly set forth in the applicable third-party license. All other rights in and to the Third-Party Materials are expressly reserved by the applicable third-party licensor.

6.4 Feedback. If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Plume Services (**Feedback**), then you grant Plume a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive and fully sub-licensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of and otherwise exploit in any manner all Feedback. You also acknowledge and agree that Plume may publish your Feedback on its website and attribute that Feedback to you.

7. CHANGES TO PLUME SERVICES AND THESE PLUME TERMS

7.1 Updates. We are always looking to innovate and make the Plume Services better. As a result, Plume may from time to time update the Plume Services, including enhancements, modifications, upgrades and other changes to the existing features and operability of the Plume Services and the Plume Products (collectively, **Updates**). These Updates may occur for various reasons, such as adding or removing functionality, fixing bugs, and addressing issues relating to security or performance. Whenever possible, Plume will provide you with reasonable, advance notice (which may include notice by way of posting in the Plume Services or within a Mobile App) of material Updates to enable you to prepare for the Updates. You acknowledge and agree that Updates made to comply with applicable law may not allow Plume to provide advance notice of Updates.

Plume wants you to use the most recent version of a Mobile App and Product Software to ensure you have the latest features, bug fixes and more. You acknowledge that you may be required to install Updates to use the Plume Services and the Plume Products and you agree to promptly install Updates. By downloading or installing a Mobile App or using the Product Software, you consent to the installation of the software and to future Updates. You agree to use the most current version of each Mobile App available in Apple App Store or Google Play and the most current version of the Plume Software. Plume may only support the most current version of the Mobile Apps and Plume Software.

In some cases, some Updates may be installed automatically. YOU AGREE TO THE AUTOMATIC INSTALLATION OF UPDATES. You can withdraw your consent at any time by uninstalling a Mobile App and/or by otherwise stopping your use of the Plume

Services. To request assistance with the removal or disabling of a Mobile App or Product Software, please contact us.

YOU ACKNOWLEDGE, UNDERSTAND AND AGREE that the Plume Services and Updates may (i) cause your mobile telephone, computer and/or network equipment to automatically communicate with Plume's (or one of its third-party service provider's) servers to deliver the functionality described in these Terms of Service and to record Customer and User Data and Services Data, (ii) affect app-related preferences or data stored in your mobile device, and (iii) collect personal information and other information, as described in the [Plume Privacy Policy](#). You also acknowledge, understand and agree that your telecommunications services provider may impose data charges when you install Updates.

If you are the Customer, you are responsible for notifying Users about Updates that affect them.

7.2 Enhancements. Certain modifications to the Plume Services, such as Plume Services that are subject to Service Specific Terms, that add new features or functionality, or that involve the acquisition of new Plume Products or other hardware or software (Enhancements) are made available at Plume's discretion upon the payment of additional fees, if any.

7.3 Other Modifications to Plume Services. Plume reserves the right to modify, limit or discontinue the Plume Services at any time (including by limiting or discontinuing certain features of the Plume Services), temporarily or permanently, without notice to you.

Plume may elect to deprecate certain functionality or features within the Plume Services upon notice posted through the Plume Services. Whenever possible, Plume will provide at least ninety (90) days' advance notice of deprecation of any material function (and any related support) within the Plume Services. You acknowledge and agree that deprecations made to comply with applicable law may not allow Plume to provide advance notice.

To the fullest extent permitted by law, Plume will have no liability to any third party for any change to the Plume Services or any suspension or termination of your access to or use of the Plume Services made in accordance with these Plume Terms.

7.4 Changes to Plume Terms. You acknowledge and agree that Plume has the right to modify these Plume Terms from time to time to reflect changes to the Plume Services, industry requirements or applicable law. Plume will notify you at least thirty (30) business days in advance of the material modifications to these Plume Terms. Plume will send notifications of material modifications by email using the email address(es) associated with your Account Credentials and/or through a notice posted in the Plume Services. You agree that Plume may notify you by posting a notice in the Plume

Services for non-material changes to the Plume Services. You acknowledge and agree that changes to applicable law may prevent Plume from providing advance notification.

Customer is responsible for notifying Users about changes to these Plume Terms. Continued use of the Plume Services after the end of the notice period specified in the notification is deemed conclusive acceptance of these Plume Terms as modified.

8. AVAILABILITY OF PLUME SERVICES

You acknowledge that the Plume Services, including remote access and mobile notifications, are not error-free or 100% reliable or available. Proper functioning of the Plume Services relies and is dependent on, among other things, broadband internet access used to transmit data through the Wi-Fi network and the wireless device used. The Plume Services may be interrupted, delayed, refused or otherwise limited for a variety of reasons, such as insufficient coverage, power outages, termination of service, environmental conditions, interference, non-payment of applicable fees, system capacity, repairs, relocations and priority access by emergency responders in the event of a disaster or emergency (**Service Interruptions**). You understand that Service Interruptions may make the Plume Services unreliable or unavailable for the duration of the Service Interruption. Although Plume uses commercially reasonable efforts to notify you of Service Interruptions, Plume cannot and does not guarantee that you will receive these notifications. YOU AGREE THAT YOU WILL NOT RELY ON THE PLUME SERVICES FOR ANY LIFE, SAFETY OR CRITICAL PURPOSES. You agree that you will not be entitled to any refund or rebate for service interruptions or suspensions. Plume does not offer any specific uptime guarantee for the Plume Services.

The Plume Services may not be available in all languages or in all jurisdictions. Plume makes no representation that the Plume Services, or any feature or part thereof, are appropriate or available for use in any specific location. To the extent you choose to access and use the Plume Services, you do so at your own initiative and are responsible for compliance with applicable laws.

9. USER INTEGRATED SERVICES

You are solely responsible for your use of User Integrated Services through the Plume Services, such as tools that enable you to export your Customer and User Data to third parties or to link your account on Plume with an account on the third-party service. By choosing to use User Integrated Services, you agree that Plume may provide access to or transfer your Customer and User Data to the applicable third-party service provider. User Integrated Services are not under Plume's control. To the maximum extent permitted by law, Plume is not responsible for your decision to use and use of User Integrated Services.

The Plume Services also may contain links to third-party websites and services for informational purposes. These websites and services are not under Plume's control and Plume is not responsible for their content.

10. INDEMNITY

You are responsible for your use of the Plume Services, and you will defend and indemnify Plume and its officers, directors, employees, consultants, licensors, affiliates, subsidiaries and agents (together, the **Plume Entities**) from and against every claim brought by a third party, and any related liability, damage, loss and expense, including reasonable attorneys' fees and costs, arising out of or connected with: (a) your unauthorized use or misuse of the Plume Services; (b) your violation of these Plume Terms or applicable law; (c) allowing third parties to use the Plume Services through Account Credentials associated with Customer's Plume account; (d) any dispute or issue between you and any third party; and (e) User's violation of the Plume Terms or any third-party intellectual property, publicity, confidentiality, privacy or other legal property. Plume reserves the right, at our own expense, to assume the exclusive defense and control of any matter subject to indemnification (without limiting your indemnification obligations with respect to that matter) and you agree to cooperate with Plume's defense of those claims.

11. DISCLAIMERS; NO WARRANTIES

11.1 Plume Warranties. Plume warrants that (i) the Plume Services will conform in all material respects to the Documentation that Plume makes available to you; (ii) Plume is duly organized and in good standing under the laws of the jurisdiction of its organization, and (iii) Plume has all requisite power and authority (corporate or otherwise) to execute, deliver and perform its obligations under these Plume Terms.

11.2 Waiver and Disclaimers. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. Plume does not disclaim any warranty or other right that Plume is prohibited from disclaiming under applicable law, such as the mandatory warranties in the Province of Quebec, Canada.

TO THE EXTENT ANY OF THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF THE WARRANTIES APPLICABLE TO THE PLUME SERVICES WILL BE THE MINIMUM PERMITTED UNDER THAT LAW.

Except as expressly stated in Section 11.1, THE PLUME SERVICES AND OTHER CONTENT AVAILABLE THROUGH THE PLUME SERVICES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS.

THE PLUME ENTITIES DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE PLUME SERVICES AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE PLUME SERVICES, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. PLUME DOES NOT WARRANT THAT THE PLUME SERVICES OR CONTENT OFFERED THROUGH THE PLUME SERVICES WILL BE

UNINTERRUPTED, SECURE OR FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT PLUME WILL CORRECT ERROR.

PLUME MAKES NO WARRANTY, REPRESENTATION OR CONDITION THAT THE PLUME SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE ACCURATE OR RELIABLE OR THAT PLUME WILL CONTINUE TO OFFER THE PLUME SERVICES IN WHOLE OR IN PART.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE PLUME ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE PLUME SERVICES WILL CREATE ANY WARRANTY THAT IS NOT EXPRESSLY STATED IN THESE PLUME TERMS. PLUME IS NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE PLUME SERVICES AND YOUR DEALING WITH ANY OTHER CUSTOMER OR USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE PLUME SERVICES AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE PLUME SERVICES) OR ANY LOSS OF DATA.

Plume is not responsible for loss or damages arising from unauthorized use of Account Credentials unless such loss or damage arises directly from Plume's gross negligence or willful misconduct.

12. LIMITATION OF LIABILITY

THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. PLUME DOES NOT LIMIT OR EXCLUDE ANY LIABILITY THAT IS PROHIBITED FROM BEING LIMITED OR EXCLUDED UNDER APPLICABLE LAW (INCLUDING IN THE PROVINCE OF QUEBEC). TO THE EXTENT ANY LIMITATIONS OR EXCLUSIONS CONFLICT WITH APPLICABLE LAW, PLUME'S LIABILITY WILL BE THE MINIMUM PERMITTED UNDER THAT LAW.

IN NO EVENT WILL THE PLUME ENTITIES BE LIABLE TO YOU OR THIRD PARTY ACCESSING OR USING THE PLUME SERVICES PURSUANT TO YOUR ACCOUNT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE PLUME SERVICES OR ANY CONTENT ON THE PLUME SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY PLUME ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, Plume is not responsible for loss or damages arising from unauthorized use of Account Credentials unless such loss or damage arises directly from Plume's gross negligence or willful misconduct.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE PLUME ENTITIES TO YOU OR ANY THIRD PARTY FOR ACCESSING OR USING THE PLUME SERVICES PURSUANT TO YOUR ACCOUNT WITH PLUME, FOR CLAIMS ARISING OUT OF OR RELATED TO THE USE OF OR ANY INABILITY TO USE THE PLUME SERVICES OR OTHERWISE UNDER THESE PLUME TERMS, WHETHER IN CONTRACT, TORT OR OTHERWISE, IS LIMITED TO THE GREATER OF: (A) THE AMOUNT YOU PAID TO PLUME FOR ACCESS TO AND USE OF THE PLUME SERVICES IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM (BUT NOT INCLUDING THE PURCHASE PRICE FOR ANY PLUME PRODUCTS) AND (B) \$100.

EACH PROVISION OF THESE PLUME TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN PLUME AND CUSTOMER AND USERS UNDER THESE PLUME TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN PLUME AND YOU. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE PLUME TERMS. THE LIMITATIONS IN THIS SECTION 12 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. DISPUTE RESOLUTION AND AGREEMENT TO ARBITRATE

13.1 Application. Nothing in these Plume Terms will be deemed to waive, preclude or otherwise limit the right to: (i) bring an individual action in small claims court; (ii) pursue an enforcement action through a government regulator or pursue a statutory remedy available in the applicable court of law; (iii) seek injunctive relief in a court of law in aid of arbitration; or (iv) file suit in a court of law to address an intellectual property infringement claim.

13.2 Generally. In the interest of resolving disputes between you and Plume in the most expedient and cost-effective manner, and except as described in Section 13.1, you and Plume agree that every dispute arising in connection with these Plume Terms will be resolved by binding arbitration. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. These Plume Terms require you to arbitrate disputes, includes all claims arising out of or relating to any aspect of these Plume Terms and the Plume Services, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory and regardless of whether a claim arises during or after the termination of these Plume Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE PLUME TERMS, YOU AND PLUME ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

13.3 Arbitrator. Any arbitration between you and Plume will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (**AAA**) under its Consumer Arbitration Rules (collectively, **AAA Rules**) as modified by these

Plume Terms. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.

13.4 Notice of Arbitration; Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (**Notice of Arbitration**). Plume's address for Notice of Arbitration is: Plume Design, Inc., Attention Legal, 325 Lytton Avenue, Palo Alto, California, 94301. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (**Demand**). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Plume may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or Plume must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount greater than the last written settlement amount offered by Plume in settlement of the dispute prior to the award, Plume will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.

13.5 Fees. If you commence arbitration in accordance with these Plume Terms, Plume will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Santa Clara, California, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Plume for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

13.6 No Class Actions. *(Not applicable if prohibited by applicable law, including if you are consumer in the Province of Quebec.)* YOU AND PLUME AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED

CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Plume agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.

13.7 30-Day Opt-Out Period. If you do not wish to be bound by the arbitration and class-action waiver provisions in this Section 13, you must notify Plume in writing within 30 days of the date that you first accept these Plume Terms (unless a longer period is required by applicable law). Your written notification must be mailed to Plume at the following address: Plume Design, Inc., Attention Legal, 325 Lytton Avenue, Palo Alto, California, 94301. Subject to Section 13.9 below, if you do not notify Plume in accordance with this Section 13.7, you agree to be bound by the arbitration and class-action waiver provisions of these Plume Terms, including such provisions in the Plume Terms revised after the date of your first acceptance. The notification must include: (a) your name, (b) the email address associated with your Plume account, (c) your mailing address, (d) a statement that you do not wish to resolve disputes with Plume through arbitration. This notification affects these Plume Terms only; if you previously entered into other arbitration agreements with Plume or enter into other agreements in the future, your notification that you are opting out of the arbitration provision in these Plume Terms does not and will not affect the other arbitration agreements between you and Plume.

13.8 Updates to this Arbitration Provision. If Plume makes any future change to this arbitration provision, other than a change to Plume's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to Plume's address for Notice of Arbitration, in which case your account with Plume will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

13.9 Enforceability. If for some reason the entirety of the agreement to arbitrate is deemed unenforceable by a competent authority, then you and Plume agree to resolve disputes arising from or related to these Plume Terms or use of the Plume Services as described in Section 14.1 below. You and Plume agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

14. GENERAL TERMS

14.1 Governing Law. *(Not applicable if prohibited by applicable law, including if you are consumer in the Province of Quebec in Canada).* To extent permitted by applicable law, the laws of the State of California govern these Plume Terms, without regard to conflict of law principles. You and Plume submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara, California, for resolution of any lawsuit or court proceeding permitted under these Plume Terms. If you are a consumer in the Province of Quebec, the laws of Quebec govern these Plume Terms and you agree to submit to the personal and exclusive jurisdiction of the applicable courts in Quebec for resolution of any lawsuit or court proceeding permitted under these Plume Terms.

14.2 Electronic Communications. The communications between you and Plume may use electronic means. Except as prohibited by applicable law, you (a) consent to receive communications from Plume in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Plume electronically provides to you satisfy any legal requirement that such communications would satisfy if it were to be in writing.

14.3 US Government Rights. The Documentation is and the Plume Services are a "commercial item" as defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Plume Services and Documentation as are granted to all other customers and users under license, in accordance with (i) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (ii) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

14.4 Export Controls. The Plume Services may be subject to US export control laws, including the US Export Control Reform Act and its associated regulations. You will not directly or indirectly, export, re-export or release the Plume Services to, or make the Plume Services accessible from, any country, jurisdiction or third party to which export, re-export or release is prohibited by applicable law. You will comply with all applicable laws and complete all requirements (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing or otherwise making the Plume Services available outside the US.

You may not transfer any aspect of the Plume Services without U.S. government authorization to any entity on a U.S. government exclusion list (e.g., the Department of Commerce's List of Denied Persons, Entity, or Unverified List, and the Treasury Department's List of Specially Designated Nationals and Consolidated Sanctions List). You represent that you are not on a U.S. government exclusion list or under the control of or an agent for any entity on such a list, and you further warrant that you will immediately discontinue use of the Plume Services if you are placed on any such list or under the control of or an agent for any entity placed on such a list. You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo or that designated by the U.S. Government as a "terrorist supporting" country.

14.5 Force Majeure. No failure, delay or default in performance of any obligation of a party shall constitute an event of default or breach of these Plume Terms to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood, terrorist act; war; riot; theft; earthquake and other natural disaster. The party affected by such cause shall take all reasonable actions to minimize the consequences of any such cause.

14.6 Notice to California Residents. If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Plume Services or to receive further information regarding use of the Plume Services.

14.7 Other General Terms. These Plume Terms, together with the Plume Privacy Policy, Acceptable Use Policy and any other agreements expressly incorporated by reference into these Plume Terms, are the entire and exclusive understanding and agreement between you and Plume regarding your use of the Plume Services. You may not assign or transfer these Plume Terms or your rights under these Plume Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. Plume may assign these Plume Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Plume Terms, or any provision of these Plume Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. If any part of these Plume Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect. You and Plume are independent contractors in the performance of each and every part of these Plume Terms. Nothing in these Plume Terms is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. You and Plume are and will be solely responsible for your/its respective employees and agents and respective labor costs and expenses arising in connection with those employees and agents. Use of section headers in these Plume Terms is for convenience only and will not have any impact on the interpretation of any provision.

HOW TO CONTACT PLUME

Plume understands that these Plume Terms contain a lot of information to read and understand. If you have questions, please feel free to reach out to us at support@plume.com.