

# Terms of Use

Effective Date: July 23, 2019

xFLIXit, LLC has partnered with the owner of the content to provide the services described below for your personal enjoyment and entertainment in accordance with these Terms of Use ("Terms"). Please take a moment to carefully read through these Terms.

As a preliminary matter, we expect that our customer service team, which can be contacted by visiting the Contact Us page at xFLIXit TV, will be able to resolve any issues you may have as you enjoy our services. However, in the unlikely event that an issue between us remains unresolved, please note that **THESE TERMS REQUIRE ARBITRATION ON AN INDIVIDUAL BASIS, RATHER THAN JURY TRIALS OR CLASS ACTIONS. ALSO, THESE TERMS SET FORTH SPECIFIC REMEDIES AVAILABLE TO YOU. PLEASE SEE SECTIONS 11 AND 13 TO LEARN MORE.**

## **DESCRIPTION OF SERVICE AND ACCEPTANCE OF TERMS**

xFLIXit, LLC ("xFLIXit") in partnership with the owner/creator of the content ("Content Owner"; "we," or "us") provides the streaming service that includes videos, images, and audio (collectively, the "Content"). Our video service, the Content, our player for viewing the Content (the "Video Player") and any other products, features, tools, materials, or other services (including third party branded services) offered from time to time by Content Owner through a variety of Access Points (defined below) are referred to collectively as the "Services." The term "Access Points" refers to, collectively, the xFLIXit TV website (the "Content Owner Site"), applications, and other places where any Services are available, including websites and applications of Content Owner's third party distribution partners and other websites where users or website operators are permitted to embed or have otherwise licensed the Video Player.

Use of the Services (including access to the Content) is subject to compliance with these Terms which incorporate by reference our Privacy Policy available at xFLIXit TV ("Privacy Policy") and any end user license agreement that might accompany the applicable Service. Therefore, by accessing or using any of the Services through any Access Point (including by visiting the Content Owner Site or by downloading or launching the Content Owner application), you accept and agree to these Terms.

Please note that the website addresses (i.e., URLs) included within these Terms may not function as hyperlinks on all the Access Points. To view these Terms with clickable hyperlinks, please visit the Content Owner Site on your computer.

## **CHANGES TO THESE TERMS**

We may need to make changes to these Terms from time to time for many reasons. For example, we may need to reflect updates in how the Services work or changes in the law. You should look at these Terms regularly, which are posted on the Content Owner Site at xFLIXit TV. In addition, you can access these Terms from Content Owner applications. If we make a material change to these Terms, we will notify you by posting a notice on the Content Owner Site. If you are a registered user, we will also send an email to the email address you most recently provided to us prior to the material change taking effect. Therefore, it is important that you keep your account information, including email address, updated. Any material change to these Terms will be effective automatically 30 days after the revised Terms are first posted or, for users who register or otherwise provide opt-in consent during this 30-day period, at the time of registration or consent, as applicable.

## **ACCESS AND USE OF THE SERVICES**

### **Age Limitations**

Use of The Services by children under the age of 18 is expressly prohibited. If you are under the age of 18, you are not permitted to register with Content Owner or provide your personal information to Content Owner or view Content Owner's Content.

### **Your License**

Content Owner is pleased to grant you a non-exclusive limited license to use the Services, including accessing and viewing the Content on a streaming-only basis through the Video Player, for personal, non-commercial purposes as set forth in these Terms. The periods during which you can view each piece of Content will vary based on the rights availability of such Content and the terms of your subscription.

### **Profiles**

Content Owner offers the option to personalize use of the Services through the creation of one profile under one account. Only the account holder may create a profile.

### **The Content**

**Usage Rules and Limitations.** You may only access and view the Content personally and for a non-commercial purpose in compliance with these Terms. You may not either directly or through the use of any device, software, internet site, web-based service, or other means remove, alter, bypass, avoid, interfere with, or circumvent any copyright, trademark, or other proprietary notices marked on the Content or any digital rights management mechanism, device, or other content protection or access control measure associated with the Content including geo-filtering mechanisms. You may not either directly or through the use of any device, software, internet site, web-based service, or other means copy, record, download, stream capture,

reproduce, duplicate, archive, distribute, upload, publish, modify, translate, broadcast, perform, display, sell, or transmit or retransmit the Content unless expressly permitted by the terms of your subscription or otherwise by xFLIXit and Content Owner in writing. You may not incorporate the Content into, or stream or retransmit the Content via, any hardware or software application or make it available via frames or in-line links unless expressly permitted by xFLIXit and Content Owner in writing. Furthermore, you may not create, recreate, distribute or advertise an index of any significant portion of the Content unless authorized by Content Owner. You may not build a business utilizing the Content, whether or not for profit. The Content covered by these restrictions includes without limitation any text, graphics, layout, interface, logos, photographs, audio and video materials, and stills. In addition, you are strictly prohibited from creating derivative works or materials that otherwise are derived from or based on in any way the Content, including montages, mash-ups and similar videos, wallpaper, desktop themes, greeting cards, and merchandise, unless expressly permitted by xFLIXit and Content Owner in writing. This prohibition applies even if you intend to give away the derivative materials free of charge.

**Content Subjectivity.** Content tends to elicit varying reactions among different people. You may come across Content that you find offensive, indecent, explicit or objectionable. Also, Content types, genres, categories, and descriptions are provided as suggestions to help with navigation, and Content Owner does not guarantee that you will agree with them. You acknowledge these risks.

**Content Quality.** Content Owner uses various technologies to provide you with an optimal viewing experience. That said, quality of Content, including resolution, may be affected by the format of the Content, your location, the speed and bandwidth of your internet service, and the devices used, among other factors. HD availability for certain Content depends on your internet service and device capabilities. The time it takes you to begin playing Content will vary based on a number of factors, including your location, internet bandwidth, the number of devices simultaneously connecting to the same network, the Content you have selected, and the configuration of the device you are using. As a result, Content Owner is unable to make any warranties about the Content in these respects.

**Content Presentation.** We want you to have the best experience with our Services, including the ability to easily discover new Content. To help do that, Content you view across all Services may include promotional videos (e.g., previews or trailers) before and after that Content.

## **The Video Player**

You may not modify, enhance, remove, interfere with, or otherwise alter in any way any portion of the Video Player, its underlying technology, any digital rights management mechanism, device, or other content protection or access control measure incorporated into the Video Player. This restriction includes, without limitation, disabling, reverse engineering, modifying, interfering with or otherwise circumventing the Video Player in any manner that enables users to view the Content without: (i) displaying visibly both the Video Player and all surrounding elements

(including the graphical user interface, any advertising, copyright notices, and trademarks) of the Access Point where the Video Player is located; and (ii) having full access to all functionality of the Video Player, including, without limitation, all video quality and display functionality and all interactive, elective, or click-through advertising functionality.

## **Compatible Devices**

In order to access the Services, you will need to use a computer, mobile device, streaming media player, or other device that meets the system and compatibility requirements that we establish from time to time (each, a "Compatible Device"). Please note that Compatible Devices may vary by Service.

## **Internet Service and Data Usage**

In order to access the Services, you must have a high-speed broadband, wireless or similar internet connection from an internet service provider that meets certain technical specifications. Please note that multiple simultaneous streams, as well as HD and 4K Ultra HD Content, may require higher internet bandwidth. You are responsible for any costs associated with your internet service used to access the Services. Your use of the Services may count toward your data usage, depending on the terms of your agreement with your internet service provider.

## **Ownership**

You agree that xFLIXit owns and retains all rights to the Services. You further agree that the Content you access and view as part of the Services is owned or controlled by Content Owner and Content Owner's content programmers. The Services and the Content are protected by copyright, trademark, and other intellectual property laws.

## **Your Responsibilities**

In order for us to keep the Services safe and available for everyone to use, we all have to follow the same rules. You and other users must use the Services for lawful, non-commercial, and appropriate purposes only. Your commitment to this principle is critical. You agree to observe the Services, Content, Video Player and restrictions detailed above, and further agree that you will not use the Services in a way that:

- violates the rights of others, including patent, trademark, trade secret, copyright, privacy, publicity, or other proprietary rights;
- uses technology or other means to access, index, frame or link to the Services (including the Content) that is not authorized by xFLIXit and Content Owner (including by removing, disabling, bypassing, or circumventing any content protection or access control mechanisms intended to prevent the unauthorized download, stream capture, linking, framing, reproduction, access to, or distribution of the Services);
- involves accessing the Services (including the Content) through any automated means, including "robots," "spiders," or "offline readers" (other than by individually performed searches on publicly accessible search engines for

the sole purpose of, and solely to the extent necessary for, creating publicly available search indices - but not caches or archives - of the Services and excluding those search engines or indices that host, promote, or link primarily to infringing or unauthorized content);

- introduces viruses or any other computer code, files, or programs that interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- damages, disables, overburdens, impairs, or gains unauthorized access to the Services, including xFLIXit's servers, computer network, or user accounts;
- removes, modifies, disables, blocks, obscures or otherwise impairs any advertising in connection with the Services (including the Content);
- uses the Services to advertise or promote services that are not expressly approved in advance in writing by xFLIXit;
- collects information in violation of xFLIXit or Content Owner's Privacy Policy;
- encourages conduct that would constitute a criminal offense or give rise to civil liability;
- violates these Terms or any guidelines or policies posted by xFLIXit or Content Owner;
- interferes with any other party's use and enjoyment of the Services; or
- attempts to do any of the foregoing.

If Content Owner determines in its sole discretion that you are violating any of these Terms, we may (i) notify you, and (ii) use technical measures to block or restrict your access or use of the Services. In either case, you agree to immediately stop accessing or using in any way (or attempting to access or use) the Services, and you agree not to circumvent, avoid, or bypass such restrictions, or otherwise restore or attempt to restore such access or use.

### **No Spam/Unsolicited Communications**

You may not use the Services to harvest information about users for the purpose of sending, or to facilitate or encourage the sending of, unsolicited bulk or other communications. You understand that we may employ technical measures to prevent spam or unsolicited bulk or other communications from entering, utilizing, or remaining within our computer or communications networks. If you Post (as defined below in Section 7) or otherwise send spam, advertising, or other unsolicited communications of any kind through the Services, you acknowledge that you will have caused substantial harm to Content Owner and that the amount of such harm would be extremely difficult to measure.

### **Software Downloads**

In order to participate in certain Services or access certain Content, you may be notified that it is necessary to download software or other materials or agree to additional terms and conditions. Unless otherwise provided by these additional terms and conditions, they are hereby incorporated into these Terms.

## **Modification/Suspension/Discontinuation**

We regularly make changes to the Services. The availability of the Content, as well as Access Points and Compatible Devices through which the Services are available, will change from time to time. Content Owner reserves the right to replace or remove any Content and Access Points available to you through the Services, including specific titles and networks/channels, and to otherwise make changes in how we operate the Services. Additionally, you agree that for various reasons, such as restrictions from content programmers and other limitations or considerations from third parties, certain Content and functionality that may be available through one Access Point or Compatible Device may not be available through another Access Point or Compatible Device. We hope not to, but we may change, suspend, or discontinue - temporarily or permanently - some or all of the Services (including the Content and the Compatible Devices through which the Services are accessed), with respect to any or all users, at any time without notice. In our continued assessment of the Services, we may from time to time, with respect to any or all of our users, experiment with or otherwise offer certain features or other elements of the Services, including promotional features, user interfaces, plans, pricing, and advertisements. You acknowledge that Content Owner may do so in Content Owner's sole discretion at any time without notice. You also agree that Content Owner will not be liable to you for any modification, suspension, or discontinuance of the Services, although if you are a Content Owner subscriber and Content Owner suspends or discontinues your subscription to the Services, Content Owner may, in its sole discretion, provide you with a credit, refund, discount or other form of consideration (for example, we may credit additional days of service to your account) in accordance with Section 4 below. However, if Content Owner terminates your account or suspends or discontinues your access to Services due to your violation of these Terms, then you will not be eligible for any such credit, refund, discount or other consideration.

## **Customer Service**

If we can be of help to you, please do not hesitate to contact our customer service department by visiting the Contact Us page at xFLIXit TV. It would be our pleasure to serve you. We aim to deliver first-class customer service, but in the unlikely event that a customer service representative or material posted to our Help Center provides information that is inconsistent with these Terms, please be aware that these Terms will control.

## **SUBSCRIPTION AND BILLING**

### **Subscriptions**

While we may offer Content from time to time for free, we charge a fee to access the Services. The Services may include different Content offerings and features, with different benefits, conditions, and limitations. You can find the specific details regarding your subscription at any time by logging in on the Content Owner Site and viewing your account details. Because the Services are offered in multiple time zones,

for consistency, a "day" for purposes of these Terms begins at 12:00 a.m. Eastern Time and ends at 11:59 p.m. Eastern Time of that same calendar day.

## **Billing**

By providing a credit card or other payment method accepted by Content Owner ("Payment Method") for your subscription, you are expressly agreeing that we are authorized to charge you a periodic subscription fee on a recurring basis corresponding to the term of your subscription, any other fees for additional Services you may purchase, and any applicable taxes in connection with your use of your subscription to the Payment Method. If you want to use a different Payment Method than the one you signed up to use during registration, or if there is a change in your credit card validity or expiration date, you may edit your Payment Method information by logging in on the Content Owner Site and viewing your account details. When you provide a Payment Method to access a subscription, including in connection with a free trial offer, our system will attempt to verify the information you entered. We do this by processing an authorization hold, which is a standard practice. We do not charge you in connection with this authorization hold. If your Payment Method expires and you do not edit your Payment Method information or cancel your account, you authorize us to continue billing, and you will remain responsible for any uncollected amounts.

As used in these Terms, "billing" shall indicate either a charge or debit, as applicable, against your Payment Method. The subscription fee will be billed at the beginning of your subscription or expiration of your free trial period, if any, whichever is earlier, and on each periodic renewal date thereafter unless and until you cancel your subscription or the account or Service is otherwise suspended or discontinued pursuant to these Terms. To see the commencement date for your next renewal period, log in on the Content Owner Site and view your account details.

We automatically bill your Payment Method on the calendar day corresponding to commencement of your subscription. For subscribers whose subscription starts with a free trial, billing will commence upon the expiration of the free trial. Where applicable, charges may be prorated for any partial month of service. The interval of time between each recurring payment due date shall correspond to the term of your subscription and be referred to herein as a "Billing Period." In the event your subscription began on a day not contained in a given month, we bill your Payment Method on the last day of such month. For example, if you have a monthly subscription and became a paying subscriber on January 31, your Payment Method would next be billed on February 28. You acknowledge that the timing of when you are billed and the amount billed each Billing Period may vary, including for example due to free trials and other promotional offers, gift card redemptions, credits applied, changes in your subscription, changes in your Payment Method, and changes in applicable taxes, and you authorize us to charge your Payment Method for the corresponding amounts.

If we offer you a promotion (e.g., a promotional price) for your subscription, the specific terms of the promotion will be disclosed during your sign-up or in other materials provided to you describing the particular promotion. In the case of promotional pricing, we will begin billing your Payment Method for your subscription

at the regular price after your promotion ends unless you cancel prior to the end of your promotion or unless otherwise disclosed in communications made available to you.

Content Owner reserves the right to change the terms of your subscription, including price, from time to time, effective as of the beginning of your next Billing Period following the date of the change. If Content Owner changes the subscription fee or other charges for your subscription, we will give you advance notice of these changes. However, we will not be able to notify you of changes in any applicable taxes.

Very rarely, if there are special circumstances where Content Owner determines it is appropriate (e.g., your access to the Services is unavailable for days due to technical difficulties), we may provide credits to affected subscribers. The amount and form of such credits, and the decision to provide them, are at Content Owner's sole and absolute discretion, and the provision of credits in one instance does not entitle anyone to credits in the future under similar or different circumstances.

### **Ongoing Subscription and Cancellation**

Your subscription will continue in effect on a recurring basis corresponding to the term of your subscription unless and until you cancel your subscription or the account or Service is otherwise suspended or discontinued pursuant to these Terms. You must cancel your subscription before your next renewal date in order to avoid the next billing. We will bill the periodic subscription fee plus any applicable taxes to the Payment Method you provide to us during registration (or to a different Payment Method if you change your account information). In the event that you modify your subscription to switch from one Service to another Service during your Billing Period, you may not have continued access to your original Service. If you cancel your subscription, cancellation will be effective at the end of the current Billing Period - this means that you will have continued access to your subscription for the remainder of that period, but you will not receive a refund. You will also forfeit any service, referral, or redeemed gift card credits upon cancellation, including if you switch your billing from Content Owner to a third party. You can cancel your subscription by logging into your Content Owner account and following the instructions on your account page on the Content Owner Site or in the settings of our mobile application. If you pay for the Services through your account with a third party (e.g., Apple iTunes) and want to cancel your subscription or manage your billing, you may need to do so through your account with such third party.

### **Unpaid Amounts**

It is important that each subscriber honor the payment obligations to which the subscriber agreed. Accordingly, we reserve the right to retry billing your Payment Method after failed attempts (e.g., if your Payment Method is rejected). We also reserve the right to pursue any amounts you fail to pay in connection with your subscription. You will remain liable for all such amounts and all costs incurred in connection with the collection of these amounts, including, without limitation, bank overdraft fees, collection agency fees, reasonable attorneys' fees, and arbitration or court costs.

## **Free Trials**

On occasion, we may be authorized to offer free trials to a particular Service for certain qualifying users. If we offer you a free trial, the specific terms of your free trial will be stated in the material describing the particular free trial or during your sign-up. Certain limitations may exist with respect to combining free trials with any other offers. Content Owner reserves the right to determine eligibility for free trials. To view the specific details regarding your free trial, if any, log in on the Content Owner Site and view your account details.

Once your free trial period ends, we will begin billing your Payment Method for your periodic subscription fees (plus any applicable taxes), unless you cancel prior to the end of your free trial. For that reason, unless otherwise indicated in the free trial description, you may be asked to set up a valid Payment Method when redeeming a free trial offer. For existing subscribers who accept a free trial to a Service, at the end of the free trial, you may be charged a prorated amount for the Service to cover the period between the date the free trial ends and your next Billing Period begins.

It is very important to understand that you will not receive a notice from Content Owner that your free trial has ended and that payment for your subscription is due. If you wish to avoid charges to your Payment Method, you must cancel your subscription prior to midnight Eastern Time on the last day of your free trial period. You may cancel your subscription at any time as described in the "Ongoing Subscription and Cancellation" section of these Terms. We will continue to bill your Payment Method for your subscription on a recurring basis corresponding to the term of your subscription until you cancel or the account or applicable Service is otherwise suspended or discontinued pursuant to these Terms. To the extent subscriptions are offered in conjunction with purchases of, or payment for, third party products or services, you agree that Content Owner will not be liable to you for any claims arising out of or related to your purchase or use of such third party products or services. If you cancel your subscription during a free trial or while using a promotional code or other credits, cancellation may be effective immediately.

## **ACCOUNTS AND REGISTRATION**

You are responsible for all use of your account, including use of your account by other members of your household. By allowing others to access your account or to create profiles within your account, you agree to be responsible for ensuring that they comply with these Terms and you agree to be responsible for their activity using the Services.

All registration information you submit must be accurate and updated. Please keep your password confidential. You will not have to reveal it to any Content Owner representative. Because you are responsible for all use of your account, including unauthorized use by any third party, please be very careful to guard the security of your password. Please notify us by visiting the Contact Us page at xFLIXit TV if you suspect any unauthorized use of your account. Please also make sure to notify us if your registration information changes, in case we need to contact you.

You may find information on how to delete your Content Owner account by logging in on the Content Owner Site and viewing your account details. Please identify your account and provide a valid reply email address in the event we require additional information to terminate your account. Please note, if you are a subscriber you must first cancel your subscription before you will be able to delete your account. Please see the section "Ongoing Subscription and Cancellation" above for instructions on how to cancel your subscription.

We reserve the right to immediately terminate or restrict your account or your use of the Services or access to Content at any time, without notice or liability, if Content Owner determines in its sole discretion that you have breached these Terms, violated any law, rule, or regulation, engaged in other inappropriate conduct, or for any other business reason. We also reserve the right to terminate your account or your use of the Services or access to Content if such use places an undue burden on our networks or servers. Of course, we would prefer to avoid such termination; therefore, we may use technology to limit activities, such as the number of calls to the Content Owner servers being made or the volume of User Material (as defined below in Section 7) being Posted, and you agree to respect these limitations and not take any steps to circumvent, avoid, or bypass them.

## **COLLECTION AND USE OF PERSONAL INFORMATION**

For information about Content Owner's policies and practices regarding the collection and use of your information, please read Content Owner's Privacy Policy available at xFLIXit TV. The Privacy Policy is incorporated by reference and made part of these Terms. Thus, by agreeing to these Terms, you agree that your presence on the Content Owner Site and use of the Services through any other Access Point or Compatible Device are governed by the Content Owner Privacy Policy in effect at the time of your use.

## **USER REVIEWS, COMMENTS, AND OTHER MATERIAL**

### **Your Posts**

As part of the Services, users may have an opportunity to publish, transmit, submit, or otherwise post (collectively, "Post") reviews, comments, or other materials (collectively, "User Material"). In order to keep the Services enjoyable for all of our users, you must adhere to the rules below, as well as additional rules applicable to any Content Owner-hosted site.

Please choose carefully the User Material that you Post. Please limit yourself to User Material directly relevant to the Services. Moreover, you must not Post User Material that: (i) contains Unsuitable Material (as defined above in Section 3); or (ii) improperly claims the identity of another person. Please note that if you Post User Material on Content Owner using a third party service, such as a social network or email provider, your first and last name or other user ID may appear to the public each time you Post. We advise that you do not, and you should also be careful if you decide to, Post

additional personal information, such as your email address, telephone number, or street address.

You must be, or have first obtained permission from, the rightful owner of any User Material you Post. By submitting User Material, you represent and warrant that you own the User Material or otherwise have the right to grant Content Owner the license provided below. You also represent and warrant that the Posting of your User Material does not violate any right of any party, including privacy rights, publicity rights, and intellectual property rights. In addition, you agree to pay for all royalties, fees, and other payments owed to any party by reason of your Posting User Material. Content Owner will remove all User Material if we are properly notified that such User Material infringes on another person's rights. You acknowledge that Content Owner does not guarantee any confidentiality with respect to any User Material.

By Posting User Material, you are not forfeiting any ownership rights in such material to Content Owner. After Posting your User Material, you continue to retain all of the same ownership rights you had prior to Posting. By Posting your User Material, you grant Content Owner a limited license to use, display, reproduce, distribute, modify, delete from, add to, prepare derivative works of, publicly perform, and publish such User Material through the Services and on other platforms and services worldwide, including on or through any Access Point, in perpetuity, in any media formats and any media channels now known or hereinafter created. The license you grant to Content Owner is non-exclusive (meaning you are not prohibited by us from licensing your User Material to anyone else in addition to Content Owner), fully-paid, royalty-free (meaning that Content Owner is not required to pay you for the use of your User Material), and sublicensable (so that Content Owner is able to use its affiliates, subcontractors, and other partners, such as internet content delivery networks, to provide the Services). By Posting your User Material, you also hereby grant each user of the Services a non-exclusive, limited license to access your User Material, and to use, display, reproduce, distribute, and perform such User Material as permitted through the functionality of the Services and under these Terms.

### **Third Party Posts**

Despite these restrictions, please be aware that some material provided by users may be objectionable, unlawful, inaccurate, or inappropriate. Content Owner does not endorse any User Material, and User Material that is Posted does not reflect the opinions or policies of Content Owner. We reserve the right, but have no obligation, to monitor User Material and to restrict or remove User Material that we determine, in our sole discretion, is inappropriate or for any other business reason, as permitted by law. In no event does Content Owner assume any responsibility or liability whatsoever for any User Material, and you agree to waive any legal or equitable rights or remedies you may have against Content Owner with respect to such User Material.

## **LINKED DESTINATIONS AND ADVERTISING**

### **Third Party Destinations**

If we provide links or pointers to other websites or destinations, you should not infer or assume that Content Owner operates, controls, or is otherwise connected with these other websites or destinations. When you click on a link within the Services, we will not warn you that you have left the Services and are subject to the terms and conditions (including privacy policies) of another website or destination. In some cases, it may be less obvious than others that you have left the Services and reached another website or destination. Please be careful to read the terms of use and privacy policy of any other website or destination before you provide any information or engage in any transactions. These Terms do not govern your use of another website or destination.

Content Owner is not responsible for the content or practices of any website or destination other than the Content Owner Site, even if it links to the Content Owner Site and even if the website or destination is operated by a company affiliated or otherwise connected with Content Owner. By using the Services, you acknowledge and agree that Content Owner is not responsible or liable to you for any content or other materials hosted and served from any website or destination other than the Content Owner Site.

### **Third Party Advertisements and Services**

Content Owner takes no responsibility for and does not endorse any third party advertisements or any third party material Posted on any Access Point where the Services are available, nor do we take any responsibility for the products or services provided by advertisers. Any dealings you have with advertisers while using the Services, including through engaging with interactive advertisements, are between you and the advertiser, and you agree that Content Owner is not liable for any loss or claim that you may have against an advertiser. If you provide any confidential or personal information or engage in any transaction through an advertisement, Content Owner is not responsible for such information or transaction and we encourage you to read the terms of use and privacy policy of the advertiser or other party collecting such information or engaging in such transaction.

## **TRADEMARKS**

Content Owner, the Content Owner logo, and other Content Owner marks, graphics, logos, scripts, and sounds are trademarks of Content Owner. None of the Content Owner trademarks may be copied, downloaded, or otherwise exploited.

## **UNSOLICITED SUBMISSIONS**

We will not accept unsolicited submissions, including scripts, story lines, articles, fan fiction, characters, drawings, information, suggestions, ideas, or concepts. We will

delete any such submission without reading it. Therefore, any similarity between an unsolicited submission and any elements in any Content Owner creative work, including a film, series, story, title, or concept, would be purely coincidental.

## **DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNITY**

WHILE WE DO OUR BEST TO PROVIDE THE OPTIMAL PERFORMANCE OF THE SERVICES, YOU AGREE THAT USE OF THE SERVICES IS AT YOUR OWN RISK. THE SERVICES, INCLUDING THE Content Owner SITE, THE CONTENT, THE VIDEO PLAYER, THE FEATURES, USER MATERIAL, AND ANY OTHER MATERIALS CONTAINED ON OR PROVIDED THROUGH ANY ACCESS POINT OR COMPATIBLE DEVICE, ARE PROVIDED "AS IS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, Content Owner DOES NOT MAKE ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, COMPLETENESS, AVAILABILITY, SECURITY, COMPATIBILITY OR NONINFRINGEMENT; OR THAT THE SERVICES WILL BE UNINTERRUPTED, FREE OF VIRUSES AND OTHER HARMFUL COMPONENTS, ACCURATE, ERROR FREE, OR RELIABLE.

IN NO EVENT SHALL Content Owner OR ITS AFFILIATES, SUCCESSORS, AND ASSIGNS, AND EACH OF THEIR RESPECTIVE INVESTORS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND SUPPLIERS (INCLUDING DISTRIBUTORS AND CONTENT PROGRAMMERS) (COLLECTIVELY, THE "Content Owner PARTIES"), BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF THE SERVICES (INCLUDING ANY INFORMATION, PRODUCTS, OR SERVICES ADVERTISED IN, OBTAINED ON, OR PROVIDED THROUGH ANY ACCESS POINT OR COMPATIBLE DEVICE), WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY, EVEN IF THE Content Owner PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU. NOTHING IN THESE TERMS SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE AMOUNT PAID BY YOU TO US, IF ANY, FOR ACCESSING OR PARTICIPATING IN ANY ACTIVITY RELATED TO USE OF THE SERVICES OR \$50 (WHICHEVER IS LESS).

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE Content Owner PARTIES FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS), AND OTHER LOSSES ARISING OUT OF OR IN ANY WAY RELATED TO YOUR BREACH OR ALLEGED BREACH OF THESE TERMS OR YOUR USE OF THE SERVICES (INCLUDING YOUR USE OF THE CONTENT). Content Owner RESERVES THE RIGHT, AT OUR OWN EXPENSE, TO EMPLOY SEPARATE COUNSEL AND ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU.

## **NOTICE AND PROCEDURE FOR CLAIMS OF COPYRIGHT INFRINGEMENT**

If you believe that any Content, User Material, or other material provided through the Services, including through a link, infringes your copyright, you should notify Content Owner of your infringement claim in accordance with the procedure set forth below.

We will process each notice of alleged infringement that Content Owner receives and take appropriate action in accordance with applicable intellectual property laws.

Content Owner has a policy of terminating repeat infringers in appropriate circumstances.

## **ARBITRATION OF CLAIMS**

PLEASE READ THIS CAREFULLY. WE WANT YOU TO KNOW HOW IT AFFECTS YOUR RIGHTS. If you have an issue with the Services, visit the Contact Us page at xFLIXit TV. In the event there is an issue that still requires attention, we want to make the resolution process as quick and efficient as possible. We also want to specify now what each of us should expect in order to avoid any confusion later. To that end, you and Content Owner agree to first discuss any issue informally for at least 30 days. To do that, please send your full name and contact information, your concern and your proposed solution by mail to us at: Content Owner, LLC, \_\_\_\_\_. If we would like to discuss an issue with you, we will contact you using the email address you provided when you registered for Content Owner.

If we do not reach an agreed upon solution after our discussions for at least 30 days, you and Content Owner agree that any and all claims that either of us may have arising out of or relating to: (i) these Terms (including formation, performance, or breach of them, and including the scope and enforceability of this arbitration provision); (ii) the Privacy Policy, which is incorporated in these Terms; (iii) any aspect of our relationship with each other; and (iv) use of the Services, must be resolved through binding arbitration before the American Arbitration Association (“AAA”) using its Consumer Arbitration Rules, available at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. As an exception to this arbitration agreement, Content Owner is happy to give you the right to pursue in small claims court any claim that is within that court's jurisdiction as long as you proceed only on an individual basis.

You and Content Owner agree to arbitrate in each of our individual capacities only, not as a representative or member of a class, and each of us expressly waives any right to file a class action or seek relief on a class basis.

Rather than force everyone to visit us in [Georgia], if you can demonstrate that arbitration in [Georgia] would create an undue burden to you, you are free to initiate the arbitration in your home state. Otherwise, the arbitration hearings will be held in [Fulton] County, [Georgia].

You may download or copy a form Notice and a form to initiate arbitration at [www.adr.org](http://www.adr.org).

It is important that you understand that the arbitrator's decision will be binding and may be entered as a judgment in any court of competent jurisdiction. If the arbitrator rules against Content Owner, in addition to accepting whatever responsibility is ordered by the arbitrator, we think it's fair that Content Owner reimburse your reasonable attorneys' fees and costs, regardless of who initiated the arbitration. In addition, if the arbitrator rules in Content Owner's favor, Content Owner will not seek reimbursement of our attorney's fees and costs, regardless of who initiated the arbitration. For clarity, this arbitration provision will survive cancellation of your Content Owner account.

If you're not sure what all of this means, of course please feel free to ask an attorney.

## **LIMITATION ON TIME TO BRING A CLAIM**

To help resolve any issues between us promptly, you and Content Owner agree to bring any claim arising out of or relating to these Terms (including Content Owner's Privacy Policy), our relationship, or the use of the Services within one year after a claim arises; otherwise, the claim is waived. This limitation applies regardless of the venue in which such claim is or could otherwise be asserted.

## **GENERAL INFORMATION**

### **International Use**

We are a company based in the United States and offer our Services to users in the United States. Content Owner's goal is to bring you as much Content as is legally available. That said, we are limited by the rights that our content programmers grant to us. Access to the Services from locations where Content Owner does not have rights, that are not permitted by the terms of your subscription, or where Content Owner does not make the Services available is prohibited.

### **Export Controls**

Software and the transmission of applicable technical data, if any, in connection with the Services are subject to export controls. You agree to comply with all applicable laws regarding software and the transmission of technical data exported from the United States or the country in which you reside.

### **Choice of Law and Forum**

These Terms are governed by, and construed in accordance with, the laws of the State of [Georgia] without giving effect to principles of conflicts of law. To the extent that the arbitration provision outlined in Section 13 is not applicable (e.g., when confirming an arbitration award), you and Content Owner agree to submit to the exclusive jurisdiction of the courts located in the [Fulton] County of the State of [Georgia].

## **No Waiver/Reliance**

Precisely how Content Owner responds to a party that is violating these Terms will be determined after carefully analyzing all of the facts and circumstances of a particular case. You may not rely upon Content Owner's precise response with respect to one party or one situation as any indication of what Content Owner might do with respect to another party or another situation, even if the parties or situations appear to you to be similar. Similarly, if we fail to act in response to a violation of these Terms, you should not assume that we do not object to the violation or even that we are aware of it. In addition, you may not construe a waiver of any provision of these Terms with respect to any party as a waiver of that provision (or any other provision) with respect to either that party or any other party. Further, Content Owner's decision to delay exercising or enforcing any right or remedy under these Terms shall not constitute a waiver of such right or remedy. Even if Content Owner acts in a way that appears to you to be inconsistent with these Terms, Content Owner's action shall not be deemed a waiver or constructive amendment of these Terms.

## **Integration, Amendment, Severability, and Electronic Communications**

Please note that these Terms, including Content Owner's Privacy Policy which is incorporated in these Terms and any end user license agreement that might accompany the applicable Service, constitute the entire legal agreement between you and Content Owner and govern your use of the Services (including your use of the Content) (but excludes any services, if any, that Content Owner may provide to you under a separate signed written agreement), and completely replaces any prior agreements between you and Content Owner in relation to the Services. These Terms operate to the fullest extent permissible by law. If any provision of these Terms is held to be unlawful, void, or unenforceable, you and we agree that the provision will be deemed severable from these Terms and will not affect the validity and enforceability of any remaining provisions.

From time to time, we may communicate with you about the Services and these Terms electronically (e.g., emails to your registered email address, notices on the Content Owner Site and other Access Points). You consent to receive electronic communications from Content Owner and further agree that any notices, agreements, disclosures, and other communications that we send to you electronically will satisfy any applicable legal notification requirements. We recommend that you keep a copy of any electronic communications we send to you for your records.