

## ASURION PHOTOS END USER LICENSE AGREEMENT

Last updated May 14, 2020

This End User License Agreement for the Asurion Photos Application ("APP") (collectively, the "Agreement") governs your use of the APP.

**PLEASE READ THIS AGREEMENT CAREFULLY AND COMPLETELY. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU AND ASURION. THIS AGREEMENT LIMITS THE LIABILITY OF ASURION TO YOU AND CONTAINS AN ARBITRATION PROVISION REQUIRING DISPUTES TO EXCLUSIVELY GO TO ARBITRATION, AND IT ALSO CONTAINS A WAIVER TO ANY JURY TRIAL AND CLASS ACTIONS. IF YOU DO NOT AGREE WITH ANY OF THE TERMS OF THIS AGREEMENT, YOU MAY NOT DOWNLOAD OR USE THE APP.**

**ASURION PHOTOS ALLOWS YOU TO STORE, ORGANIZE, AND ANALYZE PHOTOS AND VIDEOS, WHICH MAY BE SUBJECT TO ADDITIONAL TERMS AND CONDITIONS. ASURION PHOTOS IS PROVIDED TO YOU BY ASURION. CONTACT US AT [TERMSOFUSE@ASURION.COM](mailto:TERMSOFUSE@ASURION.COM) FOR INFORMATION ABOUT THIS APP.**

**1. DEFINITIONS.** In this Agreement: (a) the words "Asurion" and "Our" and "Us" mean Asurion Mobile Applications, LLC, and their respective parents, subsidiaries, branches, affiliates, agents, employees, successors and assigns; and (b) the words "You" and "Your" mean a person who downloads or uses the APP and any person or entity represented by that individual; and (c) the word "Device(s)" means those eligible devices with operating systems Android 4.2+ and iOS 9.0+, and any additional devices as updated in Asurion's sole discretion.

**2. PRIVACY POLICY & PASSWORDS.** Our Privacy Policy is available at <https://www.asurion.com/privacy-policy/>, and explains Our policies with respect to the collection, use and disclosure of information related to or derived from Your use of the APP. Please read the Privacy Policy carefully and completely. It is incorporated by reference into this Agreement, and by using the APP, You consent to the collection, use and disclosure of Your information as set forth in that Policy. Because Asurion cannot guarantee the security of Your personal information, You acknowledge and agree that You provide it to Asurion at Your own risk. If You know or suspect that the passwords associated with or stored on Your Device have been available to or accessed by anyone as a result of Your use of the APP, You should immediately change or reset those passwords.

**3. DATA-USAGE CHARGES.** You acknowledge and agree that You may need to purchase additional equipment or software to receive the full benefit of the services, or incur data usage or other fees or charges if You use the APP. You are solely responsible for the payment of those fees or charges, and any failure to pay them may result in suspension or termination of Your access to the APP.

**4. DISCLAIMER OF WARRANTIES.** THE FOLLOWING DISCLAIMER SHALL APPLY TO YOU TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. YOU ACKNOWLEDGE AND AGREE THAT THE APP ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND THAT YOUR USE OF OR RELIANCE ON EITHER IS AT YOUR SOLE RISK AND DISCRETION. ASURION HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND GUARANTIES REGARDING THE APP, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHERMORE, ASURION MAKES NO WARRANTY THAT (A) THE APP WILL MEET YOUR REQUIREMENTS; (B) THE APP WILL BE AVAILABLE, TIMELY, CURRENT, ACCURATE, RELIABLE, COMPLETE, SECURE OR ERROR-FREE; (C) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL ACCESSED OR OBTAINED BY YOU THROUGH THE APP WILL BE AS REPRESENTED OR MEET YOUR EXPECTATIONS; OR (D) ANY ERRORS IN THE APP WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ASURION OR THE APP SHALL CREATE ANY REPRESENTATION, WARRANTY OR GUARANTY. FURTHERMORE, YOU ACKNOWLEDGE AND AGREE THAT ASURION HAS NO OBLIGATION TO SUPPORT OR MAINTAIN THE APP. YOU ACKNOWLEDGE AND AGREE THAT ASURION MIGHT NOT BE ABLE TO OFFER THE APP AT ALL, IN THE ABSENCE OF THE FOREGOING DISCLAIMERS AND LIMITATIONS. IN THE EVENT OF ANY FAILURE OF THE APP TO CONFORM TO ANY APPLICABLE WARRANTY, YOU MAY NOTIFY ASURION AND ASURION WILL, AS YOUR SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALY REASONABLE EFFORTS TO SATISFY THE WARRANTY. ASURION WILL HAVE NO OTHER WARRANTY OBLIGATION WHATSOEVER WITH RESPECT TO THE APP, AND ANY OTHER CLAIMS, LOSSES, LIABILITIES, DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE

TO ANY FAILURE TO CONFORM TO ANY WARRANTY WILL BE YOUR SOLE RESPONSIBILITY.

**5. LIMITATION OF LIABILITY.** THE FOLLOWING LIMITATIONS SHALL APPLY TO YOU TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. UNDER NO CIRCUMSTANCES SHALL ASURION BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF OR INABILITY TO ACCESS OR USE THE APP, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ASURION WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUES, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, LOSS, MISUSE OR DISCLOSURE OF DATA OR CONFIDENTIAL INFORMATION, BUSINESS INTERRUPTION, LOSS OF PRIVACY, CORRUPTION OR LOSS OF DATA, FAILURE TO RECEIVE OR BACKUP YOUR DATA (OR ARCHIVED DATA) OR ANY OTHER PECUNIARY LOSS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE APP. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ASURION'S AGGREGATE LIABILITY TO YOU (WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY YOU FOR THE APP AS APPLICABLE, IF ANY, DURING THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR \$100.00, WHICHEVER IS GREATER. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**6. ARBITRATION AGREEMENT.** Most of Your concerns about the APP can be addressed by contacting Asurion at **TERMSOFUSE@ASURION.COM**. For any dispute with Asurion, You agree to first contact us and attempt to resolve the dispute with us informally.

**A. YOU AND ASURION AGREE TO RESOLVE ANY DISPUTES THROUGH BINDING ARBITRATION OR SMALL CLAIMS COURT INSTEAD OF THROUGH COURTS OF GENERAL JURISDICTION. YOU AND ASURION AGREE THAT ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS ONLY. YOU AND ASURION AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL AND TO PARTICIPATE IN CLASS ACTIONS OR OTHER REPRESENTATIVE PROCEEDINGS.** This Arbitration Agreement ("ARB") shall survive the termination of the Agreement and is governed by the Federal Arbitration Act. This ARB shall be interpreted broadly, and it includes any dispute You have with Asurion that arises out of or relates in any way to Your relationship with Asurion or the APP, whether based in contract, tort, statute, fraud, misrepresentation or otherwise. However, this ARB does not preclude You from bringing an individual action against Asurion in small claims court or from informing any federal, state or local agencies of Your dispute. Such agencies may be able to seek relief on Your behalf.

**B.** To initiate arbitration, send a written Notice of Claim by certified mail to: Legal Department, P.O. Box 110656, Nashville, TN 37122-0656. The Notice must describe the dispute and the relief sought. If Asurion does not resolve the dispute within 60 days of receipt of the Notice, You may start an arbitration with the American Arbitration Association ("AAA"). You may contact the AAA and obtain a free copy of the rules and forms necessary to start an arbitration proceeding at [www.adr.org](http://www.adr.org) or 1-800-778-7879. Asurion will reimburse You for a filing fee paid to the AAA, and if You are unable to pay a filing fee, Asurion will pay it if You send a written request by certified mail to the Legal Department.

**C.** The arbitration shall be administered by the AAA in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes ("Rules") in effect at the time the arbitration is started and as modified by this ARB. The arbitrator is bound by the terms of this ARB and shall decide all issues, with the exception that issues relating to the enforceability of this ARB may be decided by a court. If Your dispute is for \$10,000 or less, You may conduct the arbitration by submitting documents to the arbitrator or by telephone. If Your dispute is for more than \$10,000, Your right to hearings will be determined by the Rules. Unless otherwise agreed, any hearings will take place in the county/parish of Your mailing address. Asurion will pay all filing, administration and arbitrator fees for any arbitration, unless Your dispute is found by the arbitrator to have been frivolous or brought for an improper purpose under Federal Rule of Civil Procedure 11(b). In that case, the Rules govern payment of such fees.

**D.** The arbitrator shall issue a decision including the facts and law upon which his/her decision is based. If the arbitrator finds in Your favor and issues a damages award that is greater than the value of the last settlement offer made by Asurion or if Asurion made no settlement offer, and the arbitrator awards You any damages, Asurion will: (1) pay You the amount of the award or \$2,500, whichever is greater; and (2) pay Your attorney, if any, the attorney's fees and expenses reasonably incurred in the arbitration. While the right to the attorney's fees and expenses discussed above is in addition to any right You may have under applicable law, neither You nor Your

attorney may recover duplicate awards of attorney's fees and expenses. Asurion hereby waives any right it may have under applicable law to recover attorney's fees and expenses from You if it prevails in the arbitration.

E. If You seek declaratory or injunctive relief, that relief can be awarded only to the extent necessary to provide You relief. **YOU AND ASURION AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST EACH OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT IN A PURPORTED CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE PROCEEDING.** Unless You and Asurion agree otherwise, the arbitrator may not consolidate Your dispute with the dispute of any other person and may not preside over any form of representative or class proceeding. If this specific provision of this ARB is found to be unenforceable, then the entirety of this ARB is null and void.

**7. CLAIM LIMITATION.** Unless otherwise allowed by applicable law, any claim related to the APP shall be brought within one year of the events giving rise to the claim. Failure to assert any such claim during that one-year period results in the claim being forever waived and barred.

**8. THIRD-PARTY CONTENT.** The APP may expose You to content, websites, products and services created or provided by parties other than Asurion ("third-party content"). Asurion does not review, endorse or assume any responsibility for third-party content and shall have no liability to You for access to or use of third-party content. You access or use third-party content at Your own risk and discretion, and You understand that this Agreement and Privacy Policy do not apply to that third-party content.

**9. INTELLECTUAL PROPERTY RIGHTS.** You agree that all copyrights, patents, trademarks, trade secrets and other intellectual property or proprietary rights associated with the APP are the exclusive property of Asurion, and all such rights not expressly granted to You in this Agreement are hereby reserved and retained by Asurion. If You submit comments or ideas about the APP, including ways to improve the APP or other products or services ("Ideas"), You agree that Your submission is gratuitous, unsolicited and without restriction. It does not place Asurion under any fiduciary or other obligation, and Asurion is free to use the Idea without compensation to You and/or to disclose the Idea to anyone on a non-confidential basis. You further acknowledge that Asurion does not, by acceptance of Your submission, waive any rights to use similar or related ideas previously known to Asurion, or developed by its employees or obtained from sources other than You.

**10. INDEMNIFICATION.** You agree to indemnify, defend, and hold harmless Asurion from any claim, proceeding, loss, damage, liability or expense of any kind arising out of or in connection with the following: (a) Your use or misuse of the APP; (b) Your alleged or actual breach of this Agreement; (c) Your alleged or actual violation of any applicable rule, law or regulation; (d) Your negligence or willful misconduct; or (e) Your alleged or actual violation of the intellectual property or other rights of third parties. Asurion reserves the right, at Your expense, to assume the exclusive defense and control of any matter which You are required to indemnify, and You agree to cooperate in that defense.

**11. ASSIGNMENT.** This Agreement and any rights or licenses granted hereunder may not be transferred or assigned by You, but may be transferred or assigned by Asurion, without restriction. Any attempted transfer or assignment in violation of this provision is null and void.

**12. SEVERABILITY & WAIVER.** If any term of this Agreement is found to be invalid or unenforceable, that term should be modified to the extent possible to make it valid or enforceable without losing its intent and purpose. If no such modification is possible, the term should be severed from this Agreement. Any failure to enforce a right or term of this Agreement shall not be deemed a waiver of that right or term.

**13. TERMINATION OR CHANGE OF THE APP.** We reserve the right to suspend or terminate Your use of the APP at any time and for any reason, including for abuse, excessive usage or failure to pay any fees or charges. We also reserve the right to change the scope or extent of the APP at any time and for any reason. Any refund of fees or charges We may agree to pay in such circumstances will be limited to the fees You paid in the prior month for the APP as applicable.

**14. ENTIRE AGREEMENT & GOVERNING LAW.** This Agreement and the documents incorporated by reference constitute our entire agreement with respect to the services and supersede any prior or contemporaneous agreements. This Agreement and Your relationship with Asurion shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to conflicts of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

**15. USE.** The APP is developed and provided by Asurion. The APP is intended for Your use only. You may download and use the APP only if You can form a binding contract with Asurion and You are not a person who is barred from downloading or using the APP by laws of the United States or any other applicable jurisdiction. The APP is operated from facilities in the United States, and Asurion makes no representation that the APP is appropriate or available for use in other locations. We cannot guarantee that the APP is compliant with any laws outside of the United States. You should not use the APP when traveling outside the United States and instead should use the contact telephone number internationally.

**16. LICENSE.** Asurion grants You a personal, revocable, non-transferable, non-exclusive limited right to access and use the APP solely as permitted by its functions. Asurion grants You no other rights, beyond what is expressly granted to You herein, and Asurion hereby reserves any and all other rights.

**17. FUNCTIONS.** The APP includes several functions, and Your ability to access those functions depends upon Your Device and Your agreement with Asurion and/or Your carrier. Asurion does not warrant that the APP will be compatible with or operable on Your Device or that any particular APP function will be available to You. You acknowledge and agree that not all of the APP functions may be available to You at all times or at any time. Your Device must be powered on and within Your network carrier's coverage area for the APP to operate. Asurion reserves the right to change, suspend or discontinue the APP and/or any of its functions at any time, for any reason and without notice or liability to You. It is Your responsibility to download any updates to the APP. Asurion will not assume any liability if You do not have the most current version of the APP on Your Device. Functions include but are not limited to:

- A. **AUTOMATIC BACKUP AND RESTORE OF PHOTOS AND VIDEOS.** If available, APP functions may automatically store or backup your photos and videos each time you open the APP, by making and transferring a copy of such photos and videos over the Internet to a remote data center operated by Asurion or an affiliate or partner of Asurion. There may be limitations on the size of each video and on the total size of photos and videos that can be backed up and secured. The APP will scan Your Device in order to determine if any file is new, modified, or deleted and to determine what actions need to be taken in order to complete a storage operation. This operation requires Asurion to collect information related to Your files, Your Device configuration and specification, and Your Device usage. You give Asurion permission to access, collect, and store this information, and to transmit all photos and videos to the remote data center operated by Asurion or an affiliate or partner of Asurion. If You use those functions, You may incur data charges. Asurion assumes no duties related to Your photos and videos, including any duty to preserve or monitor such files. Asurion reserves the right to restrict or limit the ability to store or backup Your photos and videos and to delete Your photos and videos at any time, for any reason and without notice or liability to You.
- B. **IN-PHONE GALLERY VIEW.** If available, the APP functions may provide you a gallery through which You may view the photos and videos stored on Your Device or that have been backed up through the APP to the server operated by Asurion or an affiliate or partner of Asurion. Such gallery function may also allow You to download and restore photos and videos that have been transferred to such server but are no longer stored on Your Device. If available, the APP will analyze your photos to perform various tasks including but not limited to, optimizing your picture quality, improving storage capabilities, improving photo organization, and enhancing viewing and retrieval options. If You use this function, You could incur data charges.
- C. **PHOTO AND VIDEO SHARING.** If available, the APP functions may allow You to use Your Device to share Your photos and videos with third parties who have access to the APP. This function, if available, will only be utilized with Your knowledge and authorization. This operation requires Asurion to make and

distribute a copy of the photo or video selected to such third party. You give Asurion permission to access, collect, store, and transmit any such copies from the remote data center operated by Asurion or an affiliate or partner of Asurion back to Asurion. If You use those functions, You may incur data charges. Asurion assumes no duties related to Your photos and videos, including any duty to preserve or monitor such files.

- D. **DATA COLLECTION AND USE.** If available, the APP may collect and convey certain data and information about Your Device. Information regarding Asurion's policies for privacy and security with regard to the gathering, use, and disclosure of the collected data and information is located in the Asurion privacy policy, available at <https://www.asurion.com/privacy-policy/>.

**18. PASSWORD & ACCOUNT INFORMATION.** You may be asked to provide an email address, mobile phone number, and/or other identifying information and create a password in order to access certain features and functions. If required, you agree that you will provide Asurion with complete and accurate information when creating Your account and using the APP. You are solely responsible for any activity that occurs on or in relation to Your account and for keeping Your password confidential, and You are solely liable for any damages resulting from Your failure to do so. Anyone with access to Your account or password can use the APP on Your Device. If You believe that the confidentiality of Your account or password has been compromised, You should change Your password immediately.

**19. COMMUNICATIONS.** You agree to receive electronic communications from Us related to Your use of the Applications ("Core Communications"), and You cannot opt out of receiving those Core Communications. You also agree to receive electronic communications from Us related to Your Device and the features available thereon, as well as Your use of that device ("Non-Core Communications"), and You can opt out of receiving those Non-Core Communications by following the "unsubscribe" instructions included in them. You agree that You are solely responsible for any charges or fees associated with Core and Non-Core Communications.

**20. RESTRICTIONS ON USE.** You shall not use the APP in any way that violates any applicable rules, laws or regulations or infringes any copyright, trademark or other intellectual property right of any third party or discloses a trade secret or confidential information. You shall not: (a) decompile, reverse engineer, disassemble, derive the source code of or decrypt the APP; (b) make any modification, adaptation, improvement, enhancement, translation or derivative work from the APP; (c) redistribute, rent, lease, loan, resell, sublicense, distribute, or otherwise transfer the APP to any third party; or (d) remove, obscure, or alter any proprietary notices (including any notice of copyright or trademark) of the APP.

**21. MISUSE.** You shall not misuse the APP, including, without limitation, using the APP in any manner that: (a) interferes with or interrupts the APP or any hardware, software, system or network connected with the APP; (b) stalks, harasses, threatens or harms any person or is otherwise invasive of another's privacy rights; (c) uses the Asurion functions on a device without permission; (d) tampers with or makes an unauthorized connection to any network, including, without limitation, the network of any wireless carrier; (e) disseminates viruses or other computer code, files or programs that interrupt, destroy or limit the functionality of the APP or any other computer software or hardware.

**22. OPEN SOURCE AND THIRD-PARTY SOFTWARE.** The APP may include open source or third-party software, and Your use of the APP is subject to any licenses or agreements governing that software.

**23. COMPLIANCE WITH U.S. EXPORT LAWS.** By downloading the APP, You acknowledge that the APP is subject to U.S. Export law, and that You will comply with all domestic and international export laws and regulations that apply to the APP.

#### **ADDENDUM FOR DOWNLOADS FROM THE APPLE APP STORE**

The following additional terms and conditions apply to You if You downloaded the APP from the Apple App Store ("iTunes-Sourced Software"). You acknowledge and agree that this Agreement is between You and Asurion only, and

not Apple, and that Apple has no responsibility for the iTunes-Sourced Software or its content. Your use of the iTunes-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the iTunes-Sourced Software. In the event of any failure of the iTunes-Sourced Software to conform to any applicable warranty, You may notify Apple, and Apple will refund the purchase price of the iTunes-Sourced Software to You. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the iTunes-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to Asurion. You acknowledge that Apple is not responsible for addressing any claims relating to the iTunes-Sourced Software or Your possession or use of the iTunes-Sourced Software, including, but not limited to: (i) product liability claims; (ii) claims that the iTunes-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to Asurion. You acknowledge that, in the event of any third-party claim that the iTunes-Sourced Software or Your possession or use of that iTunes-Sourced Software infringes intellectual property rights, Asurion, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such claim to the extent required by this Agreement. You and Asurion acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement as relates to Your license of the iTunes-Sourced Software and that upon Your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to Your license of the iTunes-Sourced Software against You as a third-party beneficiary thereof.

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