



# Xugo End User License Agreement

Last modified: July 21, 2020, version 2.2

This End User License Agreement (EULA) sets forth the legal contract between You as an end user (“**User**” or “**You**” or “**Your**”) and Systems of the Future (Australia) trading as SFI Allegro (hereinafter referred to as “**SFI**”), along with its subsidiaries and affiliates (“**SFI**” or “**We**” or “**Our**”) with respect to access to and use of SFI’s Software (“**Software**”) and any associated materials or Content (“**Content**”) made available through SFI’s websites, including [www.xugo.com.au](http://www.xugo.com.au) (with Software and Content collectively representing the “**Services**”), as well as any Support provided by SFI (“**Support**”). You must also comply with the terms of use of YouTube, Twitter, Facebook, Instagram and other social media channels or third-party services used with Xugo.

## IMPORTANT NOTICE TO ALL USERS:

**Read this carefully before installing, downloading and/or using SFI Software. By downloading, installing, copying, accessing, or using the Software, You acknowledge that You (i) have read this EULA, - these Terms and the Privacy Policy, (ii) understand it (iii) and accept and agree to be bound by its terms and conditions on Your own behalf and on behalf of Your organisation (iv) are at least 18 years old or are able to form legally binding contracts, and (v) agree to comply with all laws and regulations (including any policies of Your company) applicable to You, and to the use of the Services, and/or the internet. If You do not agree to all of the terms of this EULA, do not download, install, copy or use SFI Software in any way and immediately delete or dispose of the Software.**

You may access a copy of this EULA at any time by visiting SFI’s website ([www.sfi.com.au](http://www.sfi.com.au)) and retain a copy of this EULA for future reference.

## 1. SFI Services

- a. **Grant & Scope of License.** These Terms apply to all Users of the Services. *SFI* grants You a personal, non-exclusive, non-transferable, limited license to use the Services solely for Your personal or internal use and subject to the condition that You do not violate the General Restrictions on Use.
- b. **Ownership of the Services.** We, along with Our suppliers and partners, retain ownership of Our respective Software and Services and all rights related to the Software and Services, including all intellectual property rights. We retain all right, title and interest in and to the Services, the Content, and all documentation and tools, and all related intellectual property rights. The Services as a whole are copyrighted as a collective work, and individual works or Content appearing on or accessible

through the Services owned by or licensed to *SFI* or its Content providers are likewise subject to copyright protection domestically and internationally. Certain of the names, logos, distinctive features, source identifiers and other materials displayed on the Services, including its “look and feel”, constitute trademarks, trade names, service marks, trade dress or logos (“**Marks**”), whether or not registered, of *SFI* or other entities. All Marks not owned by *SFI* that appear on the Software are the property of their respective owners. You are not authorised to use any such Marks. Ownership of all such Marks and the goodwill associated therewith remains with *SFI* or those other entities. Unless You first obtain the copyright owner’s prior written consent, You may not copy, distribute, publicly perform, publicly display, digitally perform (in the case of sound recordings), or create derivative works from any copyrighted work made available or accessible via the Services.

As a condition of Your use of the Services, You agree that You will not use the Services for any purpose that is unlawful or prohibited by these Terms. Access to and use of password protected and/or secure area of the Services is restricted to authorised Registered Users only, subject to the additional terms and conditions in the Registered User Section below. Unauthorised access to such areas is prohibited and may lead to criminal prosecution.

- c. Privacy.** In the course of accessing and/or using the Services and receiving Support, we may obtain information about You or You may be required to provide certain personal information to *SFI*. All uses of Your personal information will be treated in accordance with Our Privacy Policy ([SFI-PrivacyPolicy](#)) published on the *SFI* Website – [www.sfi.com.au](http://www.sfi.com.au), which is incorporated by reference and forms an integral part of these Terms. If You use the Services and/or receive Support and/or if You register for any Accounts, You are accepting the terms and conditions of Our Privacy Policy as may be amended from time to time. If You do not agree to have Your information used in any of the ways described in the Privacy Policy, You must discontinue use of the Services.
- d. Marketing.** By accepting the terms and conditions of this EULA, You consent to receive marketing and promotional communications from *SFI* or its authorised re-sellers from time to time. Any such marketing and promotional communication pursuant to the consent granted under this EULA will provide You with an ‘unsubscribe’ facility. The consent under this clause is given by You every time You accept the terms and conditions of the EULA in relation to the Software.
- e. General Restrictions on Use.** In connection with Your use of the Services, You agree not to, nor to allow or facilitate a third-party to:

  - a.** copy, modify, create a derivative work from, reverse engineer, reverse assemble, or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in or access to the Services, or any other Content available via the Services;
  - b.** modify the Software, or any part thereof, in any form or manner, nor to use any modified versions of the Software, for any reason whatsoever, without the express written consent of *SFI*;

- c. make commercial use of or redistribute any Content, materials, or information contained on or offered through the Services, unless expressly specified in a prior agreement between You and *SFI*;
  - d. circumvent or manipulate any applicable fee structure, billing process, or fees owed either to *SFI* or to Our third-party providers;
  - e. use the Services or Support for illegal purposes or for promotion of dangerous ultrahazardous activities, or any activity for which failure of the Software might result in death or serious bodily injury to Customer or a Third-Party;
  - f. violate any local, state, national or international law Impersonate any person or entity, or otherwise misrepresent Your affiliation with a person or entity;
  - g. interfere with or disrupt the Services or servers or networks connected to either, or disobey any requirements, procedures, policies or regulations of networks connected to the Services;
  - h. attempt to gain unauthorised access to the Services, other Accounts, computer systems, or networks connected to the Services through hacking, password mining, phishing or any other means, obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services or use any materials or information obtained through any means not intentionally made available through the Services;
  - i. upload, post, email, transmit, distribute or otherwise make available any material that contains viruses, computer code or any other technologies that may harm *SFI* or the interests, information or property of Users or limit the functionality of any Software, hardware or other equipment;
  - j. or circumvent, disable or otherwise interfere with security-related features of the Services or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Services;
  - k. use the Software to create a competitive offering;
  - l. use the Services in any manner other than as permitted by this EULA.
- f. **Registered Users.** In order to access and use the Services available to a Registered User, You are required to set up an Account at [xugo.com.au](http://xugo.com.au) ("**Account**"). You are solely responsible for maintaining the confidentiality of Your Account, and warrant that You will not share Your Account with any third-party. You are solely responsible for any and all use of Your Account and You agree (i) to be responsible for any act or omission of any users accessing the Services under Your Account that, if undertaken by You, would be deemed a violation of this EULA, and (ii) that such act or omission shall be deemed a violation of this EULA by You.

Please notify *SFI* immediately if You become aware that Your Account is being used without authorisation. You agree not to register for an Account on behalf of an individual other than You, or register for an Account on behalf of any group or entity unless You are authorised to bind such person, group or entity to this EULA. By registering another person, group or entity You hereby represent that You are authorised to do so. Individuals and/or entities whose access to the Services has previously been terminated by *SFI* may not register for a new Account, nor may they designate other individuals to use an Account on their behalf. Notwithstanding the foregoing, You hereby expressly permit *SFI* or

its authorised partners to access Your Account in order to investigate and diagnose actual or potential defects or other technical problems with the Services and to investigate security risks or fraud.

You agree to register using Your real name and You agree that any information You submit about You is truthful and accurate. You warrant and represent that all information You provide to *SFI* as part of Your registration is true, accurate, current and complete, and You agree to maintain and promptly update such information to keep it true, accurate, current and complete. If we believe or suspect that such information is untrue, inaccurate, not current or incomplete, we may deny or terminate Your access to the Services (or any portion thereof) and any license(s) to the Services.

- g. Age Restriction.** You affirm that You are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this EULA , and to abide by and comply with this EULA. In any case, You affirm that You are at least 13 years of age. If You are under 13 years of age, You may not use the Services without the assistance of a parent or guardian.
- h. Third-Party Services.** Services that are not provided by *SFI* that You may access or use in connection with Our Services. They include YouTube, the “Social Networks”, which are the social networking sites supported by Our Services (such as Twitter, Facebook, Instagram).

Our Services interact with Social Networks and depend on the availability of those Social Networks and the features and functionality they make available to *SFI*, which we do not control and may change without notice. We are not affiliated with any Social Networks and it is possible that the Social Networks may change their rules, policies and technologies. If at any time a Social Network stops making some or all of its features or functionality available to *SFI*, or available to *SFI* on reasonable terms as determined by *SFI* in its sole discretion, we may stop providing access to those features or functionality and we will not be liable to You or any third-party for any such change.

We are not responsible for Content provided by others, including Mentions and Content from Third-Party Services (such as Content from Social Networks). You and anyone else who accesses Our Services may access Content that might be unlawful, offensive, harmful, inaccurate or otherwise inappropriate. We will not be liable to You or any third-party for Content provided by others.

You may not submit any Content through our Services or cause our Services and third-party Services to display or link to any Content in violation of any Social Networks advertising or community guidelines, statement of Rights and Responsibilities, and or Rules and Policies.

For further information see:

[https://www.facebook.com/ad\\_guidelines.php](https://www.facebook.com/ad_guidelines.php)

<https://www.facebook.com/terms.php>

<https://help.instagram.com/477434105621119/>

<https://www.youtube.com/yt/about/policies/#community-guidelines>

<https://help.twitter.com/en/rules-and-policies>.

## 2. Termination

- a. Your rights under this EULA will automatically and immediately terminate if You fail to comply with Your promises and obligations stated in this EULA. You understand and agree that upon termination of this EULA or termination of Your use of the Services, we retain the license rights granted to *SFI* under this EULA. Notwithstanding the foregoing, it is Our policy to retain all information provided to *SFI* and stored in Your Account for thirty (30) days after the termination of Your Account. After thirty (30) days, we may delete Your information from Our servers except as required by law or as otherwise agreed to between You and *SFI*. You understand that if You want to use Our Services after termination of Your Account, You may need to re-register with *SFI*.
- b. Without limiting other remedies, we also reserve the right to take technical steps against a User, including suspending or terminating the User's Services or Accounts or delaying or removing any Content, as well as the right to take legal steps against a User, if we think that a User is creating possible legal liabilities, infringing the intellectual property rights of *SFI* or third-parties, acting in violation of this EULA, or acting inconsistently with the letter or spirit of Our policies.
- c. In the event that You have a monthly subscription with *SFI*, You may terminate use of the Services by providing at least thirty (30) days' written notice of Your intent to terminate.

## 3. Payment

- a. **Payment of Fees.** You will pay to *SFI* all license fees at the published levels, unless You have a written agreement with express pricing terms executed by an authorised *SFI* representative. *SFI* retains the right to change the published pricing at any time with notice to users.
- b. **Taxes.** GST is applicable to any Fees charged by *SFI* to Our Customers within Australia. Unless expressed otherwise, all Fees shall be deemed exclusive of GST. *SFI*'s fees do not include any taxes, import or export fees, duties, or similar charges, all of which are Your responsibility.

## 4. Disclaimers, Limitations and Exclusions of Liability; Indemnification

- a. **No warranties.** THE SERVICES AND ALL INFORMATION, CONTENT, MATERIALS AND SERVICES RELATED TO THE FOREGOING ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTIES OR GUARANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, SYSTEM INTEGRATION AND ACCURACY OF DATA. *SFI* AND/OR OUR THIRD-PARTY SUPPLIERS OR LICENSORS DO NOT WARRANT THAT THE SYSTEM, CONTENT OR ANY MATERIALS OR SERVICES AVAILABLE ON OR THROUGH THE SERVICES OR THROUGH *SFI* ARE OR WILL BE ACCURATE, CURRENT, ERROR-FREE, VIRUS FREE, RELIABLE OR APPROPRIATE FOR ANY PARTICULAR

USE TO WHICH YOU OR ANY THIRD-PARTY MAY CHOOSE TO PUT THEM, THAT THE SYSTEM IS OR WILL BE AVAILABLE ON AN UNINTERRUPTED AND ERROR-FREE BASIS OR THAT DEFECTS WILL BE CORRECTED. SFI IS NOT THE PROVIDER OF, AND MAKES NO WARRANTIES WITH RESPECT TO, ANY THIRD-PARTY OFFERINGS. SFI DOES NOT GUARANTEE THE SECURITY OF ANY INFORMATION TRANSMITTED TO OR FROM THE SYSTEM; AND YOU AGREE TO ASSUME THE SECURITY RISK FOR ANY INFORMATION YOU PROVIDE USING THE SERVICES.

- b. Limitation of Liability.** USE OF THE SERVICES IS AT YOUR OWN RISK. IN NO EVENT WILL SFI BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND EVEN IF SFI WAS ADVISED THAT SUCH DAMAGES WERE LIKELY OR POSSIBLE.

In no event will the aggregate liability of *SFI* to You for any and all claims arising out of or in connection with this EULA, the Services, or the use of the Services exceed one hundred dollars (\$100.00).

You acknowledge that this limitation of liability is an essential term between You and *SFI* relating to the provision of the Services and *SFI* would not provide the Services to You without this limitation. You agree that We will not be liable to You or any other party for any termination of Your access to the Services or deletion of Your Account or Content.

Without limiting the foregoing, under no circumstances shall *SFI* or its licensors be held liable for any delay or failure in performance resulting directly or indirectly from forces of nature, or causes beyond its reasonable control, including internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages or labor or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals, or non-performance of third-parties.

- c. Indemnification.** To the extent permitted by applicable law, You agree to defend, indemnify and hold harmless *SFI*, its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Your use of and access to the Services; (ii) Your violation of any terms of this EULA; or (iii) Your violation of any third-party right, including any copyright, property, or privacy right. This defence and indemnification obligation will survive this EULA and Your use of the Services.

## 5. General Terms

- a. Modifications to Terms.** We may change this EULA from time to time. Any such changes will become effective when posted on [www.xugo.com.au](http://www.xugo.com.au). If You object to any such changes, Your sole recourse will be to cease using the Services. Continued use of the Services following posting of any such changes will indicate Your acknowledgement of such changes and Your agreement to be bound by the revised EULA, inclusive of such changes.

We reserve the right to modify the System and/or Services at any time without notice. If You object to any changes to the System or Services, Your sole recourse will be to cease using them. Continued use of the System or Services following posting of any such changes will indicate Your acknowledgement of such changes and satisfaction with the Services as so modified. We also reserve the right to discontinue the System and/or Services at any time without notice. We will not be liable to You or any third-party should We exercise Our right to modify or discontinue the System or the Services.

- b. Disputes.** All disputes shall be handled in accordance with the Company's dispute resolution policy which is:
- a. Negotiation.** If there is a dispute between the parties relating to or arising out of this EULA, then within five (5) Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
  - b. Mediation.** If the dispute between the parties relating to or arising out of this EULA is not resolved within five (5) Business Days of notification of the dispute, the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution;
  - c. Arbitration.** If the dispute between the parties relating to or arising out of this EULA is not settled by mediation, either party may by written notice to the other refer the dispute to arbitration administered by the Institute of Arbitrators of Australia or equivalent in the USA. The arbitrator will be agreed between the parties from a panel suggested by the President of the Institute of Arbitrators Australia or equivalent in the USA, or failing Agreement, an arbitrator will be appointed by the President of the Institute of Arbitrators Australia or equivalent in the USA; and
  - d. Court proceedings.** A party may not commence court proceedings in relation to a dispute relating to or arising out of this EULA until it has exhausted the above Negotiation, Mediation and Arbitration procedures in this clause, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.
- c. Electronic Communications.** The communications between You and *SFI* use electronic means. For contractual purposes, You (a) consent to receive communications from *SFI* in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that *SFI* provides to You electronically have the same effect as if they were provided in writing and signed by You in ink. The foregoing does not affect Your non-waivable rights.
- d. Conflicting Terms.** Except as otherwise specifically provided in this EULA, in the event of a conflict between the terms and conditions of this EULA and any separate Services Agreement ("**Services Agreement**") executed by You and an authorised *SFI* representative, as they apply to the relationship between *SFI* and You, the terms and conditions of that separate Services Agreement shall govern.

- e. **General Agreement.** You agree to comply with all laws, rules and regulations that apply to Your use of the Services. This EULA and any rights and licenses granted hereunder may not be transferred or assigned by You without prior written consent from *SFI*, but may be assigned by *SFI* without restriction.

This EULA, together with the Privacy Policy, any other separate terms referred to and incorporated herein by reference, and any other legal notices published by *SFI* on its websites, shall constitute the entire agreement between You and *SFI* concerning the Services. No waiver of any term of this EULA shall be deemed a further or continuing waiver of such term or any other term, and *SFI's* failure to assert any right or provision under this EULA shall not constitute a waiver of such right or provision. If any provision of these terms is found by a court of competent jurisdiction to be invalid, You agree that the court should endeavour to give effect to the intentions reflected in the invalid provision, and the other provisions of these Terms shall remain in full force and effect. The provisions of Sections 1.a, 1.b, 1.d, 2, 4, and 5 will survive the termination of these Terms. You agree that any claim or cause of action related to the Services, and/or this EULA must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## 6. Contacting SFI

If an individual requires further information regarding the *SFI* EULA, the individual may contact *SFI's* Data Privacy Officer on (03) 8847 1300.

Alternatively, an individual may write to the *SFI* Data Privacy Officer at:

Data Privacy Officer

*SFI* Allegro

Unit 3, 33 - 37 Duerdin Street

Notting Hill, VIC 3168

Australia

## 7. Review

This EULA will be reviewed annually. We may modify the EULA at any time.