

Terms and Conditions

Last Modified: March 12, 2019

These Terms and Conditions (“Terms” or “Agreement”) constitute a legal agreement between you and Tomofun Co. Ltd. and its subsidiaries and affiliated companies (collectively, “Tomofun” or “we” or “us” or “our”), the owner, operator and developer of the Furbo website available at www.Furbo.com and all associated sites linked to www.Furbo.com (the “Sites”), any mobile applications that may be downloaded on your device to access our services (the “Mobile Apps”), any Furbo hardware products (the “Hardware Products”), and software, or other digital goods and services (“Subscription Services”). The term “Services” or “Tomofun Services” will collectively refer to the Tomofun Sites, Mobile Apps, Hardware Products and Subscription Services

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION AND WAIVER OF CLASS ACTION AND JURY RIGHTS. PLEASE SEE THE DISPUTE RESOLUTION SECTION OF THIS AGREEMENT FOR MORE INFORMATION AND OPT-OUT INSTRUCTIONS.

1. Acceptance

Please read this Agreement carefully before accessing, using or registering for the Services. Any person or entity accessing, using, or registering for any Services provided by Tomofun (“Customer” or “you”) agrees to be bound or to bind the entity they represent by the terms set forth in this Agreement. All rights not expressly granted herein are reserved by Tomofun. You represent and warrant that you have the right, authority and capacity to accept and agree to this Agreement on behalf of yourself or the entity that you represent.

IF YOU DO NOT AGREE TO THE TERMS, PLEASE DO NOT ACCESS, USE, OR REGISTER FOR ANY SERVICES.

Your use, access or registration to the Services is also governed by our Privacy Policy, incorporated herein by reference. Please review the Privacy Policy to understand how we collect, use, disclose and protect your personal information.

2. Changes to this Agreement and Services

Tomofun reserves the right to change or modify this Agreement at any time by updating this page. If we make a material change to this Agreement, we will provide you with notice on our Services or to the email address we have on file. By continuing to use the Service after those changes become effective, you agree to be bound by the revised Agreement. To find out when we last updated this Agreement, please refer to the date listed after “Last Modified” at the top of this Agreement.

You understand that we are always improving and working on our Services, which means our Services may change over time. We may modify, suspend or discontinue any part of the Services, or introduce new features or restrictions on part or all of the Services. We also reserve the right to remove any Content (defined below), features, or pages for any reason, in our sole discretion, and without notice to you. You agree that we are not liable to you or any third party for any modification, suspension or discontinuance of the Services or any part thereof.

3. NOT AN EMERGENCY SERVICE

TOMOFUN SERVICES **DO NOT** PROVIDE 911 OR ANY OTHER EMERGENCY SERVICES. IF YOU ARE EXPERIENCING A 911 OR ANY OTHER EMERGENCY, IMMEDIATELY CONTACT 911, THE POLICE DEPARTMENT, FIRE DEPARTMENT, NEAREST HOSPITAL OR OTHER EMERGENCY SERVICE INSTEAD. PLEASE DO NOT CONTACT TOMOFUN'S CUSTOMER SERVICE OR CUSTOMER CARE TEAM FOR ANY EMERGENCIES.

You agree and understand that Tomofun's Services are not a 911 service, dispatch center, or other emergency-type service. We cannot assist you with any emergencies you or someone else may be experiencing while using our Services. The Service is intended to be accessed and used for non-time-critical information and non-emergency purposes.

4. Account Eligibility

We are excited to have you become a Customer! When you register for an account with our Services, you become the "Account Owner." As an Account Owner, you can authorize other individuals to access your account (the "Authorized Users").

You should only invite individuals you trust to become Authorized Users because Authorized Users have access to the personal information available in your account (e.g., account profile, video history settings, and more) and they can also modify or change your account information and settings (such as turning your camera on or off, or modifying your Smart Dog Alerts or notifications). In addition, Authorized Users can invite or enable other Authorized Users to access and use your account. Tomofun does not take any responsibility for the actions of Authorized Users.

To be eligible to access, use or register with our Services, you represent and warrant:

- You have legal capacity to form a binding contract with Tomofun;
- You are 18 years or older. Authorized Users of the account under the age of 18 must have parental or legal guardian consent to access and use the Services and can only use the Services under the supervision of their parent or legal guardian;
- As an Account Owner, you agree to be fully responsible for all actions taken on your account, including any actions taken by Authorized Users;

- You will provide us with information that is accurate, complete, and current at all times;
- You will be responsible for safeguarding the password that you use to access the Service and for any activities or actions under your password, whether your password is with our Service or a third-party service;
- You will notify us immediately upon becoming aware of any breach of security or unauthorized use of your account;
- Your use and access of the Services will not violate any applicable laws or regulations, such as embargoes or export control laws and regulations; and,
- You will not use as a username the name of another person or entity that you do not have the right to use, or the name of a person or entity with the intent to impersonate that person or entity.

Tomofun is not liable for any loss or damage arising or resulting from your failure or the failure of your Authorized Users to comply with the above requirements. In addition, failure to meet any of the eligibility requirements listed above constitutes a breach of this Agreement, which may result in immediate termination of your account on our Service.

5. Legal Restrictions on Access and Use of the Services

While the Tomofun Services are intended for your personal enjoyment and household use, there may be laws or regulations where you live that impose certain responsibilities on you and your use of our Services. For instance, there may be data protection and security laws that apply to your use of the Services. As an Account Owner or Authorized User, you control the data you collect via our Services.

You agree that it is not Tomofun's responsibility to ensure your use of the Services comply with applicable laws, including, but not limited to:

- i. Any applicable laws or regulations relating to the recording or disclosure of photographs, video and/or audio recordings, including any specific laws relating to use of our Services in the workplace, in public, or in private places that are not your home; and/or
- ii. Any laws or regulations requiring you to provide notice to and/or obtain consent from individuals with respect to your use of the Services.

If your use or access of our Services does not comply with applicable laws, you are prohibited from using or accessing our Services. We may terminate or suspend your use or access to our Services, in our sole discretion, for any reason, at any time, and without notice. We have the sole right to determine whether you are in breach of any terms contained in this Agreement.

6. Acceptable Use

All right, title and interest in the Services and Content provided through the Services are owned by Tomofun, its licensors, or designated third parties. We provide you with a

limited, non-transferable, non-exclusive right (without the right to sub-license) to access and use the Services for your personal, non-commercial use.

The rights granted to you in this Agreement are subject to the following restrictions:

- i. You may not violate any laws, regulations, guidelines or ordinances, including data protection laws, export control laws, or any other laws referenced above;
- ii. You will not license, sell, rent, lease, transfer, assign, distribute, host or otherwise commercially exploit the Services;
- iii. You will not attempt to obtain the password, account or other security information from any other Account Owner or Authorized User on our Services;
- iv. You will not compromise the security of your account or any other account on the Tomofun Services;
- v. You will not engage in conduct that is harmful, deceptive, threatening, harassing, vulgar, defamatory, obscene, fraudulent or otherwise objectionable or questionable;
- vi. You will not interfere with, disrupt, violate or attempt to gain unauthorized access to any computer network or servers connected to the Services or violate the regulations, policies or procedures of such networks;
- vii. You will not copy, store, reproduce, distribute, republish, download, display, post or transmit any part of the Services or Content provided via our Services, except as permitted by Tomofun in writing;
- viii. You will not infringe or violates the intellectual property rights or any other rights of another person or entity, including Tomofun;
- ix. You will not engage in conduct that may result in “spam” or any form of auto-responder on the Services, or processes that run or activate while you are not logged into the Services;
- x. You will not modify, make derivative works of, disassemble, reverse-compile or reverse-engineer any part of the Services;
- xi. You will not access or use the Services for purposes of building a competitive or similar product or service;
- xii. You will not upload, transmit or distribute any computer viruses, worms or any software intended to damage or alter a computer or communications network, computer, handheld mobile device, data, the Services, or any other system, device or property;
- xiii. You will not interfere with the proper working of the Services, including any unreasonable load on the Services’ infrastructure;
- xiv. You will only access or attempt to access the Services through the methods or means provided by Tomofun;
- xv. You will not remove, obscure or modify any proprietary rights notices (including copyrights and trademark notices) that may be provided by or in connection with the Services; and/or,
- xvi. You will not “crawl,” “scrape” or use “spiders” on any page, data, or portion of or relating to the Services, whether by automated or manual means.

Your failure to abide by the foregoing may result in the termination or suspension of your use or access to our Services, in our sole discretion, for any reason, at any time, and without notice. We have the sole right to determine whether you are in breach of any terms contained in this Agreement.

7. Content

Our Service may allow you to publicly share and otherwise make available certain information, graphics, videos, or other material ("Content"), including, without limitation, Content captured through or in connection with your use of the Services. Such Content may also include location information or other metadata. You are solely responsible for the Content that you publicly upload, transmit, share or otherwise disseminate on and through the Services, including its legality, reliability, and appropriateness. Tomofun reserves the right, but is not obligated, to remove any Content from the Services at any time in its sole discretion.

You hereby agree you will not use, reproduce, modify, upload, publish, transmit, distribute, display, or otherwise exploit for any purposes whatsoever any Content that (i) is not owned by you without the express prior written permission of the respective owners of the Content, and (ii) in any way that violates any third party right(s) in the Content.

Furthermore, you represent and warrant that:

- i. You own the intellectual property rights in the Content used by you or otherwise have the right to use the Content;
- ii. You grant us the license to your Content as set forth below; and,
- iii. The posting or dissemination of your Content on or through the Service does not violate the privacy rights, publicity rights, copyrights, intellectual property rights, contract rights or any other rights of any person or entity.

You hereby grant Tomofun and its licensees a non-exclusive, irrevocable, fully paid and royalty-free, perpetual, worldwide, sub-licensable and transferable right to access, re-use, distribute, store, delete, translate, copy, modify, display, sell, create derivative works from and otherwise exploit such Content for any purpose and in any media formats in any media channels without compensation to you or any other person or entity. You also hereby grant to each user of the Services a non-exclusive license to access, use and/or share your Content through the Services as permitted through the functionality of the Services and this Agreement.

8. Private Content

Tomofun does not claim ownership of your intellectual property rights in the Content or any recordings or data you provide to us via the use of our Services (the "Private Content"). However, you agree to give Tomofun the right to access, use, preserve

and/or disclose your Content and Private Content, without compensation to you or any obligation to you, for the following purposes, as limited by the Privacy Policy:

- i. To provide the Services to you;
- ii. To improve and optimize the Services, or otherwise expand Services;
- iii. To develop new Services;
- iv. To protect your rights and interests, or the rights and interests of third parties, the public, or Tomofun;
- v. To comply with applicable law or regulation, legal process (e.g., subpoena, warrant, etc.), or inquiry by a public or governmental authority;
- vi. To enforce this Agreement, including any investigation of alleged violations of this Agreement; or,
- vii. To detect, prevent, and mitigate fraudulent activity on our Services, or any security or technical issues related to our Services.

9. Trademarks, Copyrights and Intellectual Property

Tomofun owns and retains all proprietary rights to the Services, its trademarks, copyrights, trade secrets, and/or patents, whether registered or not, and all other trademarks and trade names are the property of their respective owners. The Services are licensed to you on a limited, non-exclusive, non-transferable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of this Agreement as they are applicable to the Services.

Nothing on or in the Services shall be construed as conferring any other license to you or your Authorized Users under any intellectual property right, including any right in the nature of trademark, patent, trade secret or copyright, of Tomofun or any third party, whether by estoppel, implication or otherwise. Except for any information that is in the public domain, you are not authorized to reproduce, transmit or distribute the trademarks, copyrights, proprietary information or intellectual property of Tomofun. Tomofun, and its affiliates and licensors and suppliers, reserve all rights not granted in this Agreement.

Tomofun respects others' intellectual property rights and reserves the right to delete or disable Content alleged to be infringing the Digital Millennium Copyright Act ("DMCA") and to suspend or terminate the accounts of alleged infringers. If you believe someone is infringing on your or another's copyrights, please contact us at support@furbo.com.

10. Feedback

You may submit comments, suggestions or ideas about our Services, including ways in which you would improve or change the Services (the "Feedback"). You agree that your Feedback is provided to us on a NON-CONFIDENTIAL BASIS, is voluntary, gratuitous, unsolicited and without restriction, and Tomofun does not have any fiduciary duty or other duty as a result of receiving your Feedback. You hereby grant Tomofun the

unlimited, perpetual right to use, copy, modify, publish, redistribute, create derivative works from such Feedback or otherwise disseminate your Feedback for any purpose and in any way without compensation or any obligation to you or any other third parties. Tomofun does not waive any rights to use similar or related feedback or ideas known to Tomofun, developed by Tomofun's employees, or obtained from other sources.

11. Purchases

If you wish to purchase any product or service made available through the Services ("Purchase"), you may be asked to supply certain information relevant to your Purchase including, without limitation, your credit card number, the expiration date of your credit card, your billing address, and your shipping information. We may require additional information from you prior to accepting or processing your order.

You represent and warrant that: (i) you have the legal right to use any credit card(s) or other payment method(s) in connection with any Purchase; and that (ii) the information you supply to us is true, correct and complete.

By submitting such information, you grant us the right to use or provide the information to third parties for purposes of facilitating the completion of Purchases or providing our Services to you.

We reserve the right to refuse or cancel your order at any time for certain reasons including but not limited to: product or service availability; we suspect you are purchasing products for resale without written permission from us; errors in the description or price of the product or service; error in your order or other reasons; or if fraud or an unauthorized or illegal transaction is suspected. Furthermore, we reserve the right to collect any rejection or insufficient funds fee and to process any such payment by the payment method you have submitted to us. Your charges may be payable in advance, in arrears, or as otherwise described when you initially selected to use the paid Services.

12. Subscription Services – Furbo Dog Nanny

You may choose to enable certain parts of our Services that allow you to store video and/or audio footage or photographs in cloud storage for up to 24 hours, download them to your mobile device, or to receive certain types of notifications, by registering for our Subscription Services. If you do not register for the Subscription Services, you will only be able to record for the limited purpose of giving you access to a real-time stream of the area where the Hardware Product is located; you will not be able to access any past recordings nor can you enable the Subscription Services retroactively. If you or an Authorized User delete any data collected as a result of the Subscription Services, the data will be deleted and no longer available to you. Tomofun may charge an additional fee for the use of some or all of the Subscription Services. In our sole discretion, we may modify, suspend, terminate, or change the Subscription Services at any time.

- a. **Subscription.** You can find a description of our Subscription Services on our website, and we will explain which Subscription Service options are available to you when you sign up for the Furbo Dog Nanny or other services we offer. Your Subscription Services will continue month-to-month, annually or based on the other timescale subscription plan (the "Subscription Term") that you select, and will automatically renew until terminated. You will be entitled to access the Subscription Services you purchased for each Subscription Term until such subscription is cancelled. To change or discontinue a Purchase, please go to your account settings or contact us at least 24 hours before the next Subscription Term. To use the Furbo Dog Nanny you must provide us with one or more Payment Methods. "Payment Method" means a current, valid, accepted method of payment, as may be updated from time to time and which may include payment through your account with a third party. You must cancel your Subscription Services before it renews to avoid billing of the next Subscription Term's fees to your Payment Method (see "Cancellation" below).
- b. **Free Trial.** Your purchase of a Furbo Hardware Product may include a trial period to use the Subscription Service at no cost ("Free Trial"). The Free Trial period of your Subscription Service lasts for three months, or as otherwise specified during sign-up and is intended to allow new subscribers to try our Subscription Service. We will not require you to provide your payment details to start the Free Trial.

Free Trial eligibility is determined by Tomofun at its sole discretion and we may limit eligibility or duration to prevent Free Trial abuse. We reserve the right to revoke the Free Trial and put your account on hold in the event that we determine that you are not eligible. Members of households with an existing or recent Tomofun Subscription Services are not eligible. We may use information such as device ID, method of payment or an account email address used with an existing or recent Tomofun Subscription Services to determine eligibility.

If you would like to continue to access the Subscription Service after your Free Trial ends, you must purchase a Subscription Service. If you do not purchase a Subscription Service, then your access to the Subscription Service will end.

- c. **Billing Cycle.** The Subscription Services will be charged based on the Subscription Term you select to your Payment Method on the calendar day corresponding to the commencement of the paying portion of your Subscription until your Subscription is cancelled. For example, if you sign up for a monthly subscription on January 15, you will be charged again on February 15 for the next month of the Subscription Services.
- d. **Payment Methods.** To use the Subscription Services you must provide one or more Payment Methods. You can update your Payment Methods by going to

the "Account" page. Following any update, you authorize us to continue to charge the applicable Payment Method(s). You authorize us to charge any Payment Method associated to your account in case your primary Payment Method is declined or no longer available to us for payment of your Subscription Services. You remain responsible for any uncollected amounts. If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not cancel your account, we may suspend your access to the Subscription Services until we have successfully charged a valid Payment Method. For some Payment Methods, the issuer may charge you certain fees, such as foreign transaction fees or other fees relating to the processing of your Payment Method. Check with your Payment Method service provider for details.

- e. **Cancellation.** To cancel, go to the "Account" page on our website or your account settings on your Mobile App and follow the instructions for cancellation. You can cancel your auto-renewal for your Subscription Services at any time, and you will continue to have access to the Subscription Services through the end of your Subscription Term. You must cancel your subscription-based Services at least 24 hours before the next Subscription Term to avoid further charges. Unless you cancel auto-renewal for your subscription, the Subscription Services will be automatically extended for successive renewal periods of the same duration as the Subscription Term originally selected, at the then-current non-promotional rate. We do not provide refunds or credits for any partial Subscription Term. If you cancel your Subscription Services, your account will automatically close at the end of your current billing period for your Subscription Term.

It is your responsibility to backup any data, software, or other materials you may have stored or preserved via your use of the Subscription Services. It is likely that such data, software, or other materials will be lost after your Subscription Services end. Tomofun will not be responsible for any such damage or loss.

- f. **Changes to the Price and Subscription Terms.** We reserve the right to change our subscription plans or adjust pricing for our service or any components thereof in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in these Terms of Use, any price changes or changes to your Subscription Services will take effect following notice to you.

Refunds. Payments for Subscription Services are nonrefundable and there are no refunds or credits for partially used periods. Following any cancellation, however, you will continue to have access to the Subscription Service through the end of your Subscription Term. You will not be eligible for a prorated refund of your payment for Subscription Services.

- g. **For Canadian residents only.** Notwithstanding the foregoing, if you are a resident of Canada, you have 7 days from the date you signed up for a Subscription Service to cancel and receive a full refund. Please note that if you signed up for a Free Trial, then the 7-day period runs from the date that you signed up for the Free Trial.

13. Refund Policy – Hardware Products

Please refer to the [Shipping, Returns & Warranty Policy](#), which is incorporated herein by reference, for information about shipping limitations, returns, and any warranty attached to the Hardware Product you have purchased.

14. Service Interruptions

Our Services may be suspended temporarily or permanently without notice to you for security purposes, maintenance or repair, system failures, or other similar circumstances (collectively, “Service Interruptions”). You acknowledge and agree that you are not entitled to a refund or rebate related to such Service Interruptions. We do not offer a service level or uptime guarantee with our Services.

15. Intended Use and Reliability of Services

Your access and use of the Tomofun Services is intended to be non-time-critical. Tomofun does not make any representations or warranties that use of the Services will improve or affect your level of safety. While we intend to provide you with reliable Services, you hereby acknowledge that the use of the Services is not intended to be 100% reliable and it is not a substitute for a third-party monitored emergency notification system.

Our Services may experience interruptions or issues for various reasons, including a poor Wi-Fi connection or your mobile carrier’s data and usage plan. We cannot and do not guarantee that you will receive timely or accurate notifications through our Services, to the extent you enable such features, nor that we will maintain and store your data. You are solely responsible for maintaining and storing any backups of video or audio recordings or photographs outside of the Services to avoid any loss of such data.

You acknowledge that the availability of our Services is dependent on your Internet Service Provider (“ISP”), your mobile device operator or carrier (“Mobile Carrier”), and your computer, mobile device, home wiring, Wi-Fi, Bluetooth connection or other relevant equipment. You are responsible for ensuring you comply with your ISP’s and Mobile Carrier’s applicable terms and agreements, including any data and usage terms.

16. System Requirements

To access or use the Services, you must have:

- An account;
- A wireless device that is supported by the Services, such as a mobile smartphone or tablet;
- A functioning and always available Wi-Fi network or broadband Internet connection in your home; and,
- Any other specifications provided with the specific Services you Purchase.

You acknowledge that the Services may not function if you are not able to meet the requirements listed above.

17. Installation and Use

Tomofun will provide you with installation and safety instructions when you Purchase our Services. These instructions may accompany the Hardware Products or may be delivered via a message in the App. It is your responsibility to ensure you are following the instructions correctly. YOU MAY EXPERIENCE TECHNICAL OR PERFORMANCE ISSUES WITH OUR SERVICES IF THE SERVICES ARE NOT PROPERLY INSTALLED. ALWAYS TEST THE SERVICES AT INSTALLATION AND REGULARLY THEREAFTER TO ENSURE THEIR PROPER FUNCTIONING. PART OF THE SERVICES MAY REQUIRE REPLACEMENT FOR THEIR PROPER FUNCTION, SUCH AS TREATS FOR THE FURBO DOG CAMERA OR ADAPTER REPLACEMENT. IF YOU ARE EXPERIENCING TECHNICAL DIFFICULTIES, PLEASE REFER TO OUR [FURBO HELP CENTER](#) OR CONTACT US AT SUPPORT@FURBO.COM.

18. Warning Messages in the App

From time to time, we may deliver warning messages via the App to update users on the safe usage of our Services. Please monitor the App for these warning messages. It is your responsibility to ensure you read and follow these warning messages.

19. Availability, Errors and Inaccuracies

We are constantly updating our offerings of products and services on the Service. The products or services available on our Service may be mispriced, described inaccurately, or unavailable, and we may experience delays in updating information on the Service and in our advertising on other web sites, applications or platforms.

We cannot and do not guarantee the accuracy or completeness of any information, including prices, product images, specifications, availability, and services. We reserve the right to change or update information and to correct errors, inaccuracies, or omissions at any time without prior notice (including after an order has been submitted).

20. Automatic Software Updates

We may, from time to time, develop updates, patches, bug fixes, upgrades or other modifications to the Services (the “Software Updates”). Software Updates may improve or optimize the Services, or make changes to the Services in our sole discretion. You hereby agree that Tomofun may automatically install the Software Updates without notice or additional consent from you, except as required by applicable law or in accordance with our Privacy Policy. If you do not want such Software Updates, you may terminate your Services with us.

21. Third Party Links and Services

Our Services may contain links or access to third-party web sites or services that are not owned or controlled by Tomofun (“Third Party Services”). A description or link to Third Party Services does not imply an endorsement by Tomofun of the Third Party Services.

Tomofun has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any Third Party Services. You further acknowledge and agree that Tomofun shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such Third Party Services.

You may be required to agree to additional Third Party Services terms and conditions, warranties, or other policies. This Agreement or any other Tomofun agreements with you do not apply to your access or use of Third Party Services. We strongly advise you to read the terms and conditions and privacy policies of any Third Party Services that you access or use.

22. Contests, Sweepstakes and Promotions

Any contests, sweepstakes or other promotions (collectively, "Promotions") made available through the Services may be governed by rules that are separate from this Agreement. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy. If the rules for a Promotion conflict with this Agreement, the Promotion rules shall apply.

22. Security

Tomofun has certain technical, administrative, and physical security measures in place to protect your personal information. However, Tomofun’s Services are provided over the Internet and we cannot guarantee that your personal information will not be accessed, used or disclosed by unauthorized third parties. In addition, you are also responsible for the security of your personal information on our Services. You should ensure that any wireless Internet connections you use for the Product Hardware, Mobile App or other Services are secure, and only share your account information with third parties you trust. If you believe that the security of your personal information on our Services has been compromised, please contact us immediately at support@furbo.com.

23. Indemnification

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS TOMOFUN, ITS OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, SUPPLIERS, OR LICENSEES, FOR ANY LOSSES, DAMAGES, COSTS, LIABILITIES AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, LEGAL FEES, AWARDS OR SETTLEMENTS) RELATING TO OR ARISING OUT OF YOUR OR YOUR AUTHORIZED USERS' USE OF THE SERVICES, AND INCLUDING ANY BREACH BY YOU OF THE TERMS CONTAINED IN THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THIS INDEMNIFICATION SHALL NOT APPLY TO CLAIMS BASED ON TOMOFUN'S OWN WILLFUL, WANTON, OR INTENTIONAL MISCONDUCT BY TOMOFUN.

24. Warranty Disclaimer

TOMOFUN PROVIDES THE SERVICES ON AN "AS IS" BASIS AND DOES NOT MAKE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR DO WE IN ANY WAY GUARANTEE THE QUALITY, DATA CONTENT, ARTISTIC WORTH OR LEGALITY OF INFORMATION, CONTENT, GOODS OR SERVICES THAT ARE TRANSFERRED, RECEIVED, PURCHASED OR OTHERWISE MADE AVAILABLE OR OBTAINED BY WAY OF THIS WEBSITE OR THE SERVICES. TOMOFUN DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE, BE SECURE, BE UNINTERRUPTED, BE ERROR FREE, MEET YOUR REQUIREMENTS, BE FREE OF ANY DEFECTS, VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT DEFECTS WILL BE CORRECTED. SOME OR ALL OF THE EXCLUSIONS ABOVE MAY NOT APPLY TO YOU DEPENDING ON THE JURISDICTION IN WHICH YOU RESIDE.

25. Limitations of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE WARRANTY AND OTHER DISCLAIMERS IN THIS AGREEMENT, IN NO EVENT SHALL TOMOFUN, ITS OFFICERS, EMPLOYEES, PARTNERS, AGENTS, OR AFFILIATES, BE (A) LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES ARISING FROM OR RELATING TO THE SERVICES, WHETHER OR NOT WE HAVE BEEN INFORMED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND (B) HAVE TOTAL CUMULATIVE LIABILITY FOR ANY DIRECT DAMAGES, PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF LIFE OR ANY OTHER DAMAGES NOT EXCLUDED OR PRECLUDED PURSUANT TO (A) ABOVE, ARISING FROM OR RELATED TO THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT NEVER TO EXCEED THE AMOUNT ACTUALLY PAID BY

YOU TO TOMOFUN OR AN AUTHORIZED TOMOFUN RESELLER FOR THE SERVICES AT ISSUE WITHIN THE PRIOR TWELVE (12) MONTHS (IF ANY). TOMOFUN DISCLAIMS ALL LIABILITY OF ANY KIND OF TOMOFUN'S LICENSORS AND SUPPLIERS.

TOMOFUN DISCLAIMS ALL LIABILITY ARISING FROM OR RELATING TO ANY CONTENT OR PRIVATE CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT OR PRIVATE CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT OR PRIVATE CONTENT, OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED IN CONNECTION WITH USE OF, OR EXPOSURE TO, ANY CONTENT OR PRIVATE CONTENT POSTED, EMAILED, ACCESSED, TRANSMITTED, DISSEMINATED OR OTHERWISE MADE AVAILABLE VIA THE SERVICES.

THIS SECTION SHALL APPLY EVEN IF TOMOFUN IS FOUND LIABLE FOR ANY LOSS OR DAMAGE DUE TO BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED OR LIMITED WARRANTY, NEGLIGENCE OF ANY KIND OR DEGREE, SUBROGATION, INDEMNIFICATION OR CONTRIBUTION, STRICT PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY OF LIABILITY.

FOR THOSE JURISDICTIONS THAT DO NOT PERMIT LIMITATION OF LIABILITY FOR GROSS NEGLIGENCE, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY WILLFUL, WANTON, INTENTIONAL, RECKLESS MISCONDUCT, OR GROSS NEGLIGENCE OF TOMOFUN.

26. Dispute Resolution and Waiver of Class Action and Jury Rights

You understand and agree that any dispute, claim, or controversy arising under or in connection with this Agreement, including your use and access to the Services or any other content, including, but not limited to, claims as to whether any services rendered by Tomofun or persons employed or engaged by Tomofun were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered, shall be finally and exclusively resolved by binding arbitration under the American Arbitration Association's ("AAA") Commercial Arbitration Rules and Mediation Procedures and Consumer-Related Disputes Supplementary Procedures, and not by a lawsuit or resort to court process, except as California law provides for judicial review of arbitration proceedings. Each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights. It is your responsibility to pay any AAA filing, administrative and arbitrator fees as set forth in the AAA Rules.

YOU ACKNOWLEDGE AND AGREE THAT BOTH PARTIES TO THIS AGREEMENT ARE GIVING UP THEIR CONSTITUTIONAL RIGHT TO HAVE SUCH DISPUTE DECIDED IN A COURT OF LAW BEFORE A JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION LAWSUIT,

CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY-GENERAL ACTION, OR ANY OTHER REPRESENTATIVE PROCEEDING.

The parties further agree that the arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement to arbitrate. Any such controversy or claim shall be arbitrated on an individual basis, unless both parties otherwise agree in writing. The arbitration shall be held in San Francisco County, California, U.S.A.

You may cancel this agreement to arbitrate by giving written notice to Tomofun within 30 days of the date of your acceptance of this Agreement, or 30 days after Tomofun makes material changes to this section of this Agreement. You should send your cancellation notice to support@furbo.com with the following information: (i) your name, (ii) your Tomofun account email address; (iii) your mailing address; (iv) a statement of your wish not to resolve disputes with Tomofun through arbitration. Your notice to opt-out of arbitration only applies to this Agreement; if you previously entered into other arbitration agreements with Tomofun or enter into other such agreements in the future, your notification that you are opting out of the arbitration terms of this Agreement shall not affect the other arbitration agreements between you and Tomofun. Should you choose to withdraw from the arbitration provision, all other provisions of this Agreement shall remain in full force and effect.

If for any reason a claim proceeds in court rather than arbitration, each party waives any right to a jury trial. You agree to the personal jurisdiction by and venue in the state and federal courts of San Francisco County in the State of California or a United States District Court for the Northern District of California located in San Francisco, California, and waive any objection to such jurisdiction or venue.

27. General

a. Entire Agreement

This Agreement constitutes the entire agreement among the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written between the parties with respect to any Services provided by Tomofun. Notwithstanding the foregoing, you may also be subject to additional terms and conditions, posted policies, guidelines, or rules that may apply when you use the Services, use or access the services, content or software of our affiliates, third parties or collaborating partners, or our enter sweepstakes, promotions, or contests.

b. Term for Cause of Action

Any claim under this Agreement must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred; claims made under the

separate terms and conditions of purchase for goods or services are not subject to this limitation.

c. Governing Law

Except to the extent a claim or dispute is preempted by U.S. federal law, any claim or dispute arising from or relating to this Agreement is governed by the laws of the State of California, without regard to provisions of conflicts of law. Any lawsuit arising from or related to this Agreement shall be brought exclusively before the Superior Court of California, County of San Francisco, and you hereby agree to the jurisdiction of any such court, unless such claim or dispute is required to be arbitrated as set forth in an above section.

d. Headings

The section titles in this Agreement are for your convenience only and have no legal or contractual effect.

e. Assignment

You may not assign or delegate any rights or obligations under this Agreement, and any such attempts will be ineffective. Tomofun can freely assign or delegate all rights and obligations under this Agreement in part or in its entirety without notice to you.

f. Severability and Waiver

A failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful, void or for any reason unenforceable then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any of the remaining provisions.

g. Notifications

We may provide notifications to you as required or permitted by law via email to the primary email address associated with the Account Owner, mobile notification, hard copy or posting of such notice on our Services. Tomofun is not responsible for any automatic filtering that you or your network provider may apply to such notifications.

h. Termination

This Agreement will remain in full force and effect as long as you continue to access or use the Services, or until terminated in accordance with provisions of this Agreement. We may terminate or suspend your use, access or account immediately, without prior notice or liability, for any reason whatsoever, including without limitation if you breach this Agreement.

If you transfer the Services to another owner, your right to use our Services immediately terminates with respect to the transferred Services. The new owner shall have no right to use the Services as your Account Owner and will need to register as a separate Account Owner and accept this Agreement.

Upon termination, your right to use the Services will immediately cease. If you wish to terminate your account, you may simply discontinue using the Service or contact us at support@furbo.com.

i. Contact Us

If you have any question about this Agreement, please contact us at support@furbo.com.