

## Terms of Use

**Effective Date: March 2015**

Thanks for using this Twonky product (the Twonky products are referred to herein as the "Products"). The Products are operated by Lynx Technology ("Lynx Technology", "Twonky", "we", "our", "us"). Please review these Terms of Use carefully. If you do not agree with these Terms of Use, please do not use the Products.

**1. Representations.** You represent that you are of legal age to form a binding contract and are not a person barred from receiving Twonky products or services under the laws of the United States or other applicable jurisdictions. You represent that the information you provide to us is accurate, complete, and up to date.

**2. Restrictions and Termination.** Failure to abide by the requirements of these Terms of Use shall constitute a breach of these Terms of Use. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms of Use, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, or (iv) protect the rights, property or safety of Lynx Technology its users and the public.

**3. Data Collection.** This product will not collect any personally identifiable information. For users who voluntarily allow the this Twonky product to collect information by accepting these Terms of Use, we keep track data such as: the domains; IP addresses; specific media players, servers, and other devices detected by the Products. We also collect, receive and store certain types of information and product usage statistics such as media playback and beaming requests, and size and content types of user libraries.

**4. User Conduct.** You represent and warrant that you will not use the Products to: (a) interfere or attempt to interfere with the proper working of the Products or any activities conducted with or on the Products; or (b) bypass any measures Twonky may use to prevent or restrict access to the Products.

**5. User Content.** You acknowledge that we do not control any information, user comments, data, text, software, music, sound, photographs, graphics, video, messages, tags, images, illustrations, software, audio clips and video clips or other materials, or any suggestions, comments or other feedback about the Products provided by users ("User Content"), whether publicly posted or privately transmitted. You also acknowledge that we reserve the right, but have no obligation, to monitor User Content, and, as such, we do not control or guarantee the accuracy, integrity or quality of User Content. You acknowledge that by using the Products, you may be exposed to User Content that is offensive, indecent or objectionable. Under no circumstances will we be liable in any way for any User Content, including, but not limited to, any errors or omissions in any User Content, or any loss or damage of any kind incurred as a result of the use of any User Content posted, transmitted or otherwise made available via the Products. You will have the option to allow your User Content to be shared, but if you select this option, you understand that your User Content will be visible to all other end users on your Local Area Network ("LAN").

**6. Our Intellectual Property Rights and Your Limited Use Right.** The Products and their contents, including, without limitation, the text, information, material, software and graphics contained in or on the Products, are the intellectual property of Lynx Technology or its licensors and are protected by applicable copyright, trademark and proprietary rights, laws and treaties. Lynx Technology, Twonky, the Twonky logo, and associated tag lines are trademarks of Lynx Technology, which may be registered in some jurisdictions. We make no proprietary claim to any third-party names, trademarks or service marks appearing on the Products. All other trademarks used are owned by their respective owners. The Products and their contents may not be copied, reproduced, modified, published, uploaded, downloaded, posted, transmitted, or distributed in any way, without our prior written permission, however, upon registration and your acceptance of these Terms of Use, we grant to you a limited non-exclusive license to install the Products on your computer or mobile device and use the Products and their contents for your own personal, non-commercial, internal use in accordance with these Terms of Use. You may not (a) modify the Products or their contents or use them for any commercial purpose, or any other public display, performance, sale, or rental; (b) decompile, reverse engineer, or disassemble software materials included in the Products; (c) remove any copyright notice or other proprietary notices from the Products; or (d) transfer the Products or their contents to another person. We may, but are not obligated to, periodically provide updates to the Products to resolve bugs or, add features and functionality. No part of the Products, their contents, any form or document may be reproduced in any form or incorporated into any information retrieval system, electronic or mechanical, other than for your personal, not-for profit use. You do not acquire any ownership rights to the Products or to any contents therein. All rights not expressly granted herein are reserved by us.

**7. Disclaimer of Warranty.** THE INFORMATION IN AND ON THE PRODUCTS IS PROVIDED "AS IS" AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED (INCLUDING BUT NOT LIMITED TO THE

DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE).

**8. Limitation of Liability.** IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING ANY LOST PROFITS, LOST DATA, OR LOST SAVINGS, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY EVEN IF LYNX TECHNOLOGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some states do not allow the exclusion or limitation of special, incidental, or consequential damages, so the above exclusion or limitation may not apply to you.

**9. Indemnification.** You agree to defend, indemnify and hold us harmless from and against any and all claims, damages, and costs including attorneys' fees, arising from or related to your use of the Products.

**10. Independent Contractors.** No agency, partnership, joint venture, or employment is created as a result of these Terms of Use and you do not have any authority of any kind to bind us in any respect whatsoever.

**11. Non-Waiver.** The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

**12. Language.** The official language of these Terms of Use is the English language, which language shall be controlling in all respects. In the event of any dispute concerning the construction or interpretation of these Terms of Use, reference shall be made only to the English version and not to any other translation in any other language.

**13. Force Majeure.** We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference).

**14. Third Party Beneficiary.** If you acquire the Product from a third-party app store, you agree that such app store is a third party beneficiary of these Terms of Use, and that such app store shall have the right to enforce these Terms of Use against you, and that your remedy in the event of any failure of the Product to conform to these Terms of Use may be limited to a refund of the purchase price for the Product.

**15. Severability.** If any provision of these Terms of Use is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms of Use shall otherwise remain in full force and effect and enforceable.

**16. Assignment.** This Agreement is not assignable, transferable or sub-licensable by you except with our prior written consent. We may transfer, assign or delegate these Terms of Use and its rights and obligations without consent.

**17. Governing Law.** By using the Products, you agree that these Terms of Use shall be governed by and construed in accordance with the laws of the State of California, United States of America, without regards to its conflict of law rules.

**18. Arbitration Agreement and Waiver Of Class Remedies.** All disputes arising under or relating to these Terms of Use shall be resolved exclusively through arbitration in San Francisco, California, before a single arbitrator. The arbitrator, and not any federal, state or local court or agency, shall have the exclusive authority to resolve any dispute arising under or relating to the interpretation, applicability, enforceability, or formation of these Terms of Use, including, but not limited to, any claim that all or any part of these Terms of Use is void or voidable. The parties further agree that they may only bring claims in their individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.

**19. Entire Agreement.** This Agreement supersedes all prior and contemporaneous agreements, representations and warranties and understandings, whether oral or written, with respect to the Products, the Products' contents and any services provided through the Products. Modifications to these Terms of Use that are not posted on the Products and that do not fall under the Amendments Section below, are not valid unless made in writing and signed by the appropriate Twonky representative. In the event of any conflict between these Terms of Use and any other agreement or understanding related to the Products, these Terms of Use shall control.