

Adobe Captivate Prime Terms of Use

Adobe Captivate Prime Terms of Use is between Adobe (defined below) and “you” (jointly, the “**Parties**”). You agree that these terms are like any written negotiated agreement signed by you. This agreement is enforceable against you and the legal entity on whose behalf the Service is used i.e., your employer. These terms govern your use of our website or services of eLearning management solutions, online collaboration and enterprise training solutions capabilities of Adobe Captivate Prime (collectively, “**Services**”) including any applications, Content Files (defined below), scripts, instruction sets, and any related documentation. By using the Services, you agree to these terms. If you have entered into another agreement with us concerning the Services, then the terms of that agreement controls where it conflicts with these terms. **As discussed more in Section 3 below, you retain all rights and ownership you have in your content that you make available through the Services.**

1. How this Agreement Works

- 1.1. **Choice of Law.** If you reside in North America, your relationship is with Adobe Systems Incorporated, a United States company, and the Services are governed by the law of California, U.S.A. If you reside outside of North America, your relationship is with Adobe Systems Software Ireland Limited, and the Services is governed by the law of Ireland. You may have additional rights under the law. We do not seek to limit those rights to the extent prohibited by law.
- 1.2. **Eligibility.** You may only use the Services if you are (a) over 13 years old, (b) allowed by law to enter into a binding contract and (c) allowed by legal entity on whose behalf you use the Service.
- 1.3. **Privacy.** The Privacy Policy at <http://www.adobe.com/go/privacy> governs any personal information you provide to us. By using the Services you agree to the terms of the Privacy Policy.
- 1.4. **Availability.** Pages describing the Services are accessible worldwide but this does not mean all Services or service features are available in your country, or that user-generated content available via the Services is legal in your country. We may block access to certain Services (or certain service features or content) in certain countries. It is your responsibility to make sure your use of the Services is legal where you use them. Services are not available in all languages.
- 1.5. **Modification.** We may modify, update, or discontinue the Services (including any of their portions or features) at any time without liability to you or anyone else. However, we will make reasonable effort to notify you before we make the change. We will also allow you a reasonable time to download your content. If we discontinue a Service in its entirety, then we will provide you with a pro rata refund for any unused fees for that Service that you may have prepaid.
- 1.6. **Definitions:**
 - (A). “**License Metrics**” means terms set forth in a separate writing (such as order form or online order between you and Adobe) describing the scope of your right to use the Service, and the applicable Subscription Term. The License Metrics are incorporated by reference into this agreement.
 - (B). “**Report**” means any graphical or numerical display of your data which may contains Adobe’s proprietary design, look and feel, which is generated by the Services.
 - (C). “**Registered Users**” means only your employees or temporary worker or your third party

contractors who are authorized by you, to use, participate and interacts with the Service through a unique password and log-in, for non-commercial purpose, which does not exceed the licensed quantity as per Licensed Metrics. Each Registered User may access the Services via a single access point using the single login assigned to that individual.

(D). **"Sensitive Personal Data"** is given the meaning under relevant privacy or data protection laws relating to this term or any similar term (such as "sensitive personal information") used in the applicable laws, or where no such laws apply, means financial information (including financial account information), sexual preferences, medical or health information, and personal information of children protected under any child protection laws (such as the personal information defined under the US Children's Online Privacy Protection Act).

(E). **"Subscription Term"** means the period of time for which you have elected to pay for and/or use the Service as indicated in the License Metrics.

2. Use of Service.

2.1. **License.** Subject to your compliance with these terms and the law, we grant you during the Subscription Term, a non-transferable, non-exclusive, and worldwide license to
(A) access and use the Services through applicable interface;
(B) permit the Registered Users to access the Services;
(C) use and distribute the Reports internally within your business,
Solely in connection with your use of Services for its internal operations and non-commercial purpose.

2.2. **Adobe Intellectual Property.** We (and our licensors) remain the sole owner of all right, title, and interest in the Services. We reserve all rights not granted under these terms.

2.3. **Storage.** When the Services provide storage, we recommend that you continue to back up your content regularly. We may create reasonable technical limits on your content, such as limits on file size, storage space, processing capacity, and other technical limits. We may suspend the Services until you are within the storage space limit associated with your account.

2.4. **User-Generated Content.** We may host user-generated content from our users. If you access our Services, you may come across content that you find offensive or upsetting. Your sole remedy is to simply stop viewing the content. If available, you may also click on the "Report" button to report the content to us.

2.5. **Content Files.** "Content Files" means Adobe-provided sample files such as stock images or sounds. Unless the documentation or specific license associated with the Content Files state otherwise, you may use, display, modify, reproduce, and distribute any of the Content Files. However, you may not distribute the Content Files on a stand-alone basis (i.e., in circumstances in which the Content Files constitute the primary value of the product being distributed), and you must not claim any trademark rights in the Content Files or derivative works of the Content Files.

2.6. You will take all steps necessary to protect Adobe's proprietary rights in the Services. You will ensure that the Services is made available only to authorized Registered Users who are using the Services, solely for the duration of their permitted use of the Service and in accordance with your's standard end user agreement or terms of use applicable to the Services (the "End User

Agreement”) that is binding upon and enforceable against the such Registered Users. Such End User Agreement will include terms and conditions (i) substantially equivalent to, and no less protective of Adobe’s interests as those stated in this Agreement, (ii) disclaiming, to the extent permitted under applicable laws, any warranty obligations or other liabilities on the part of Adobe or its suppliers. You shall at the time be responsible for all act, omission, violation of terms herein by Registered Users.

- 2.7. Your Responsibilities regarding personal information of Registered Users. As between Adobe and You, You shall have sole responsibility for any and all information of Registered User used and submitted in connection with the Services, and we shall have no responsibility in connection thereto. You shall comply with all data protection and privacy laws and rules applicable to information of Registered User. You shall obtain and maintain consent from Registered Users to your access, use, or disclosure of information of Registered User. You shall obtain any authorizations from Registered Users required to enable us to provide the Services. You shall defend, indemnify, and hold harmless Adobe from any claim, suit or proceeding brought against Adobe by a Registered User in connection with any acts or omissions with regards to such information of Registered Users. You agree not to use the Services to collect, process, or store any Sensitive Personal Data of the Registered Users. You agree not to transmit, disclose, or make available Sensitive Personal Data to Adobe or Adobe’s third-party providers.
- 2.8. **Emails to Registered Users.** Emails related to the Services are generally sent to Registered Users by You and not by Adobe. If applicable, we may send emails to Registered Users in your name as your agent, at your request. You are solely responsible for such emails and the contents thereof.
- 2.9. **Use of Online Services.** The Service may facilitate your access to APIs or other websites maintained by Adobe or its affiliates or third parties offering services (collectively, “**Online Services**”). Use of such Online Services may be subject to additional terms and conditions. EXCEPT AS EXPRESSLY AGREED BY ADOBE OR ITS AFFILIATES OR A THIRD PARTY IN A SEPARATE AGREEMENT, YOUR’S USE OF ONLINE SERVICES IS AT ITS OWN RISK.
- 2.10. **Other License Types.**
 - (A) **NFR Version.** We may designate the Services as “trial”, “evaluation”, “not for resale”, or other similar designation (“**NFR Version**”). You may use the NFR Version only during the period and only for the purposes that we have stated when we provide the NFR Version. You must not use any materials you produce with the NFR Version for anything other than non-commercial purposes.
 - (B) **Pre-release Version.** We may designate the Services as a pre-release or beta version (“**Pre-release Version**”). Pre-release Version does not represent the final product and may contain bugs that may cause system or other failure and data loss. We may choose not to commercially release the Pre-release Version. You must promptly cease using the Pre-release Version and destroy all copies of Pre-release Version if we request you to do so, or if we release a commercial version of the Pre-release Version. Any separate agreement we enter into with you governing the Pre-release Version will supersede the provisions on Pre-Release Version set out in this section.
 - (C) **Education Version.** If we designate the Service as for use by educational users (“**Educational Version**”), then you may only use the Educational Version if you meet the eligibility

requirements stated at http://www.adobe.com/go/edu_purchasing. You may install and use Educational Version only in the country where you are qualified as an educational user. If you reside in the European Economic Area, then the word "country" in the sentence preceding this one means the European Economic Area.

3. Your Content.

- 3.1. Ownership. You retain all rights and ownership of your content. We do not claim any ownership rights to your content.** Your Content shall be stored on Adobe's servers at your request as necessary for us to provide the Service and enable Registered Users to consume your content. We may create reasonable technical limits on your Content, such as limits on file size, storage space, processing capacity, and other technical limits. You shall be responsible to use commercially reasonable efforts to block the uploading of Content to the Service that contains viruses detected by using industry standard virus detection software.
- 3.2. Licenses to Your Content in Order to Operate the Services.** We require certain licenses from you to your content to operate and enable the Services. When you upload content to the Services, you grant us a non-exclusive, worldwide, royalty-free, sub-licensable, and transferrable license to use, reproduce, publicly display, distribute, modify (so as to better showcase your content, for example), publicly perform, and translate the content as needed in response to user driven actions (such as when you choose to store privately or share your content with others). This license is only for the purpose of operating or improving the Services.
- 3.3. Our Access.** We will not access, view, or listen to any of your content, except as reasonably necessary to perform the Services. Actions reasonably necessary to perform the Services may include (but are not limited to) (a) responding to support requests; (b) detecting, preventing, or otherwise addressing fraud, security, unlawful, or technical issues; and (c) enforcing these terms.
- 3.4. Sharing Your Content.**
- (A) **Sharing.** Services provide features that allow you to Share your content with other Registered Users to undertake/consume, the courses/content created by you, track and share the results and progress of the courses undertaken by the Registered Users. "Share" means to email, post, transmit, upload, or otherwise make available to Registered Users through your use of the Services. Please consider carefully what you choose to Share as you are entirely responsible for the content that you Share.
 - (B) **Level of Access.** We do not monitor or control what others do with your content. You are responsible for determining the limitations that are placed on your content and for applying the appropriate level of access to your content. If you do not choose the access level to apply to your content, the system may default to its most permissive setting. It's your responsibility to let other Registered Users know how your content may be shared and adjust the setting related to accessing or sharing of your content.
 - (C) **Comments.** The Services may allow you to comment on content. Comments are not anonymous, and may be viewed by other Registered Users. Your comments may be deleted by you, other users, or us.
- 3.5. Termination of License.** You may revoke this license to your content and terminate our rights at any time by removing your content from the Service. However, some copies of your content

may be retained as part of our routine backups.

- 3.6. Feedback.** You have no obligation to provide us with ideas, suggestions, or proposals ("**Feedback**"). However, if you submit Feedback to us, then you grant us a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferrable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, and publicly perform the Feedback.
- 4. Account Information.** **To gain access to and use the Service, you and each of Registered User will be required to create a log-in ID and password. You are responsible for all activity that occurs via your account. Please notify Customer Support immediately if you become aware of any unauthorized use of your account. You may not (a) Share your account information (except with an authorized account administrator) or (b) use another person's account. The account administrator (minimum one) may use the account information to manage the use and access to the Services.**
- 5. User Conduct.**

 - 5.1. Responsible Use.** The Adobe communities often consist of users who expect a certain degree of courtesy and professionalism. You must use the Services responsibly.
 - 5.2. Misuse.** You must not misuse the Services, or content that we provide to you as part of the Services. For example, you must not:

 - (A) copy, modify, host, stream, sublicense, lease, sell, or resell the Services, or content unless permitted in writing;
 - (B) enable or allow others to use the Service, or content using your account information;
 - (C) use the content included in the Services to construct any kind of database;
 - (D) access or attempt to access the Services by any means other than the interface we provided or authorized;
 - (E) circumvent any access or use restrictions put into place to prevent certain uses of the Services;
 - (F) share content or engage in behavior that violates anyone's Intellectual Property Right ("**Intellectual Property Rights**" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights.);
 - (G) upload or share any content that is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
 - (H) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
 - (I) attempt to disable, overburden, impair, or destroy the Services, or hardware;
 - (J) disrupt, interfere with, or inhibit any other user from using the Services (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way),
 - (K) engage in chain letters, junk mails, pyramid schemes, spamming, or other unsolicited messages;
 - (L) place advertisement of any products or services in the Services;
 - (M) use any data mining or similar data gathering and extraction methods in connection with the Services;

- (N) violate applicable law (including, where applicable, COPPA, HIPPA);
- (O) upload any Contents that contains any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, Information, or property of another; or
- (P) remove, obscure, or alter any proprietary notices associated with the Services.

6. Fees and Payment.

- 6.1. Taxes and Third-Party Fees.** You must pay any applicable taxes, and any applicable third-party fee (including, for example telephone toll charges, mobile carrier fees, ISP charges, data plan charges, credit card fees, foreign exchange fees). We are not responsible for these fees. We may take steps to collect the fees you owe us. You are responsible for all related collection costs and expenses.
- 6.2. Credit Card Information.** If you do not notify us of updates to your payment method, to avoid interruption of your service, we may participate in programs supported by your card provider to try to update your payment information, and you authorize us to continue billing your account with the updated information that we obtain.

7. Your Warranty and Indemnification Obligations.

- 7.1. Warranty.** By uploading your content to the Services, you agree that you have: (a) all necessary licenses and permissions, to use and Share your content and (b) the rights necessary to grant the licenses in these terms.
- 7.2. Indemnification.** You will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees, arising out of or related to your content, your use of the Services, or your violation of these terms.

8. Disclaimers of Warranties.

- 8.1. The Services are provided "AS-IS." To the maximum extent permitted by law, we disclaim all warranties express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. We make no commitments about the content within the Services. We further disclaim any warranty that (a) the Services will meet your requirements or will be constantly available, uninterrupted, timely, secure, or error-free; (b) the results that may be obtained from the use of the Services will be effective, accurate, or reliable; (c) the quality of the Services will meet your expectations; or that (d) any errors or defects in the Services will be corrected.**
- 8.2. We specifically disclaim any liability for any actions resulting from your use of any Services. You may use and access the Services at your own discretion and risk, and you are solely responsible for any damage to your computer system or loss of data that results from the use and access of any Service.**

9. Limitation of Liability.

- 9.1. We are not liable to you or anyone else for: (a) any loss of use, data, goodwill, or profits, whether or not foreseeable; and (b) any special, incidental, indirect, consequential, or punitive damages whatsoever (even if we have been advised of the possibility of these damages), including those (x) resulting from loss of use, data, or profits, whether or not foreseeable, (y) based on any theory of liability, including breach of contract or warranty, negligence or other tortious action, or (z) arising from any other claim arising out of or in connection with your use of or access to the Services. Nothing in these terms limits or excludes our liability for gross negligence, for our (or our employees') intentional misconduct, or for death or personal injury.
- 9.2. Our total liability in any matter arising out of or related to these terms is limited to US \$100 or the aggregate amount that you paid for access to the Service during the three-month period preceding the event giving rise to the liability, whichever is larger. This limitation will apply even if we have been advised of the possibility of the liability exceeding the amount and notwithstanding any failure of essential purpose of any limited remedy.
- 9.3. The limitations and exclusions in this Section 9 apply to the maximum extent permitted by law.

10. Termination.

- 10.1. **Termination by You.** You may stop using the Services at any time. Termination of your account does not relieve you of any obligation to pay any outstanding fees.
- 10.2. **Termination by Us.** If we terminate these terms for reasons other than for cause, then we will make reasonable effort to notify you at least 30 days prior to termination via the email address you provide to us with instructions on how to retrieve your content. We may at any time terminate these terms (and your access to Services) with you if:
- (A). you breach any provision of these terms (or act in a manner that clearly shows you do not intend to, or are unable to, comply with these terms);
 - (B). you fail to make the timely payment of fees for the Services, if any;
 - (C). we are required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful);
 - (D). we elect to discontinue the Services, in whole or in part, (such as if it becomes impractical for us to continue offering Services in your region due to change of law); or
 - (E). there has been an extended period of inactivity in your free account.
- 10.3. **Termination by Group Administrator.** Group administrators for a Service may terminate a Registered User's access to a Service at any time.
- 10.4. **Survival.** Upon expiration or termination of these terms, any perpetual licenses you have granted, your indemnification obligations, our warranty disclaimers or limitations of liabilities, and dispute resolution provisions stated in these terms will survive. Upon the expiration or termination of the Services, some or all of the features will cease to operate without prior notice.

11. Investigations.
 - 11.1. **Screening.** We do not review all content uploaded to the Services, but we may use available technologies or processes to screen for certain types of illegal content (for example, child pornography) or other abusive content or behavior (for example, patterns of activity that indicate spam or phishing, or keywords that indicate adult content has been posted outside of the adult wall).
 - 11.2. **Disclosure.** We may access or disclose information about you, or your use of the Services, (a) when it is required by law (such as when we receive a valid subpoena or search warrant); (b) to respond to your requests for customer service support; or (c) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public.
12. Export Control Laws. The Services, content, and your use of the Services, and content, are subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Services, and content. You agree to comply with all the laws, restrictions, and regulations.
13. Dispute Resolution.
 - 13.1. **Process.** For any concern or dispute you may have, you agree to first try to resolve the dispute informally by contacting us. If a dispute is not resolved within 30 days of submission, you or Adobe must resolve any claims relating to these terms, the Services, through final and binding arbitration, except that you may assert claims in small claims court if your claims qualify.
 - 13.2. **Rules.** If you reside in the Americas, JAMS will administrate the arbitration in Santa Clara County, California pursuant to its Comprehensive Arbitration Rules and Procedures. If you reside in Australia, New Zealand, Japan, mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C., the Republic of Korea, India, Sri Lanka, Bangladesh, Nepal, or a member state of the Association of Southeast Asian Nations (ASEAN), then the Singapore International Arbitration Centre (SIAC) will administer the arbitration in Singapore under its Rules of Arbitration, which rules are deemed to be incorporated by reference in this section. Otherwise, the London Court of International Arbitration (LCIA) will administer the arbitration in London under the LCIA Arbitration Rules. There will be one arbitrator that you and Adobe both select. The arbitration will be conducted in the English language, but any witness whose native language is not English may give testimony in the witness' native language, with simultaneous translation into English (at the expense of the party presenting the witness). Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the parties.
 - 13.3. **No Class Actions.** You may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action.
 - 13.4. **Injunctive Relief.** Notwithstanding the foregoing, in the event of your or others' unauthorized access to or use of the Services or content in violation of these terms you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

14. **True-Up.** If, during the Subscription Term, you use the Services beyond the license quantity (or allows more Registered User to use and access the Services than the license quantity), then you will report any such change to us and will pay the applicable license fee for such over-deployment at least 30 days prior to the end of then-current Subscription Term. If, during the Subscription Term, you experiences a reduction of Services deployments resulting in a negative True-Up result, you will not be entitled to a credit or refund and no reduction will be made to the quantity of the then-licensed Services.
15. **Modification.** We may modify these terms that apply to a Service to, for example, reflect changes to the law or changes to our Services. You should look at the terms regularly. We will post notice of modifications to these terms on this page. By continuing to use or access the Services after the revisions come into effect, you agree to be bound by the revised terms.
16. **Miscellaneous.**
 - 16.1. **English Version.** The English version of these terms will be the version used when interpreting or construing these terms.
 - 16.2. **Notice to Adobe.** You may send the notices to us to at the following address: Adobe Systems, 345 Park Avenue, San Jose, California 95110-2704, Attention: General Counsel.
 - 16.3. **Notice to You.** We may notify you by email, postal mail, postings within the Services, or other legally acceptable means.
 - 16.4. **Entire Agreement.** These terms constitute the entire agreement between you and us regarding your use of the Services and supersede any prior agreements between you and us relating to the Services.
 - 16.5. **Non-Assignment.** You may not assign or otherwise transfer these terms or your rights and obligations under these terms, in whole or in part, without our written consent and any such attempt will be void. We may transfer our rights under these terms to a third party.
 - 16.6. **Severability.** If a particular term is not enforceable, the unenforceability of that term will not affect any other terms.
 - 16.7. **No Waiver.** Our failure to enforce or exercise any of these terms is not a waiver of that section.
17. **DMCA.** We respect the Intellectual Property Rights of others and we expect you to do the same. You shall comply with Digital Millennium Copyright Act ("DMCA") at all the time. We will respond to clear notices of copyright infringement consistent with the DMCA. You can learn more about Adobe's IP Takedown policies and practices here: <http://www.adobe.com/legal/dmca.html>

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