

LAST UPDATED: February 17, 2012

## **1. Acceptance of Adobe.com Terms of Use.**

Your use of the Service(s) (as defined below) is subject to these Additional Terms, which supplement the Adobe.com Terms of Service (“General Terms”) located at <http://www.adobe.com/go/terms>. The General Terms are incorporated herein by reference. If you are a resident of North America, your relationship is with Adobe Systems Incorporated, a United States company, and you agree to be bound by the laws of the United States. If you reside outside of North America, your relationship is with Adobe Systems Software Ireland Limited, and you agree to be bound by the laws of Ireland, including Irish data protection laws. Regardless of where you reside, you agree to be bound by Section 18 of these Additional Terms of Use regarding the resolution of disputes. Adobe Systems Incorporated (“Adobe”) reserves the right to update and change, from time to time, these Additional Terms, the General Terms, and all other documents incorporated by reference. If any future changes to this Agreement (as defined below) are unacceptable to you, (a) you should refuse to accept any updated terms proposed to you by Adobe; (b) you must discontinue using the Services; and (c) you may terminate this Agreement in accordance with Section 19 (Termination). You can always find the most recent version of these Additional Terms and the General Terms at <http://www.adobe.com/go/terms>. Capitalized terms used in these Additional Terms shall be defined as set forth in the General Terms or in these Additional Terms. In the event of any inconsistency between these Additional Terms and the General Terms, these Additional Terms shall control with respect to the Services.

## **2. Description of the Services.**

Adobe provides access to certain services, features, applications, and tools related to website hosting and other web-based solutions (individually and collectively, the “Services”). Depending on the plan you purchase, the Services may include, without limitation, registration functionality, purchasing functionality, email marketing campaign delivery, web analytics, customer relationship management, reporting, and domain name system services. Some Services may be subject to additional terms and conditions.

Adobe may also facilitate your, or, if you are a Partner (as defined below), your clients’ use of third-party services, including but not limited to, payment gateways. Once Adobe has facilitated such use, Adobe is not responsible for any aspect of your or your client’s relationship and/or transactions with such third party.

## **3. Definitions.**

“Adobe Online Privacy Policy” means the Adobe Online Privacy Policy, which is available at <http://www.adobe.com/go/privacy> or any successor Web site thereto.

“Agreement” means these Additional Terms, the General Terms, and the Adobe Online Privacy Policy.

“End User” means an individual who interacts with the Services as a result of such party’s relationship with or connection to you. If you are a Site Owner (as defined below), an End User is an individual who uses your website that is hosted through the Services. If you are a Partner (as defined below), an End User means: (i) your client (that is, the person to whom you resell the Services); and (ii) the individuals who use your client’s website that is hosted through the Services.

“Information” means personally identifiable information. “End User Information” means personally identifiable information about an End User.

“Partner” is the term we use to refer to you if you are permitted by us to resell the Services to third parties. We refer to each such third party as your “Client.”

“Site Owner” is the term we use to refer to you if you use the Services on your own behalf.

#### **4. Your Compliance With This Agreement.**

You acknowledge that your compliance with the terms of this Agreement may require you to provide certain notices to, obtain certain rights from, and impose certain obligations on your Clients and/or users of the websites hosted by the Services. To that end, you agree that each website for which Adobe provides Services on your behalf (including, if you are a Partner, your Clients’ websites) will contain a clear and conspicuous link to a terms of use and a privacy policy that comply with all applicable laws, rules, and regulations.

#### **5. Partner Obligations.**

Without limiting any obligations imposed by this Agreement, if you are a Partner, you understand and agree that:

(a) If Adobe provides notice to you that a website hosted through the Services on behalf of your Client is alleged to contain material that infringes upon the copyright of a third party, you will work with your Client in accordance with Section 17 of the General Terms (Notification of Copyright Infringement) to, within five (5) days of receipt of such notice, either: (a) remove the allegedly infringing material from the website and provide Adobe with written confirmation of such removal; or (b) provide Adobe with a written counter notification consistent with Section 17 of the General Terms. You agree that Adobe may remove allegedly infringing material if Adobe does not receive a written confirmation of removal or counter notification within five (5) days of your receipt of such notice.

- (b) It is solely your responsibility to ascertain and obey all applicable local, state, federal and international laws and rules in regard to the use and resale of the Services.
- (c) You are responsible for your Clients' compliance with applicable laws in connection with their use of the Services.
- (d) You are responsible for complying with all applicable laws, rules, and regulations regarding the collection, use, processing, disclosure, maintenance, and retention of End User Information.
- (e) You are responsible for determining whether your use and resale of the Services comply with the privacy and data security requirements of the laws of the applicable jurisdiction(s).
- (f) You will obtain any authorizations from End Users required to enable Adobe to provide the Services and to access and process End User Information.
- (g) You have or will obtain all rights necessary for you to grant Adobe the licenses granted in Section 16 ("Content"), below.
- (h) The Content (as defined below) and your provision of the Content to Adobe via the Services will comply with all applicable laws, rules and regulations.
- (i) Your agreement with each Client gives Adobe the right to access, use, remove, and/or delete Content as set forth in this Agreement. In any such agreement, you do not have to identify Adobe by name; you may refer to Adobe as your service provider.

## **6. Your Compliance With Applicable Laws.**

It is solely your responsibility to ascertain and obey all applicable local, state, federal and international laws and rules in regard to the use, and, if you are a Partner, the resale, of the Services. Without limiting the generality of the foregoing or any other provision of this Agreement, you understand and agree that such laws may include those governing the collection, use, disclosure, and retention of personal information; the advertisement of products and services; the sending of commercial email messages, text messages, and other communications; and export and import. If you are a Partner, you are further responsible for your End User clients' compliance with applicable laws in connection with their use of the Services.

## **7. No Spam.**

You agree that you will not directly or indirectly use the Services, or permit the Services to be used, to deliver or facilitate unsolicited commercial email or SMS messages.

## **8. Information Received from You.**

If you are a Site Owner or a Partner, the terms of the Adobe Online Privacy Policy <http://www.adobe.com/go/privacy> govern Adobe's use of Information we collect from and about you in connection with your purchase and use of the Services (excluding any End User Information).

**Use and Disclosure of Your Information.** In addition to the uses and disclosures described in the Adobe Online Privacy Policy, Adobe may:

- Use your Information to ask you to complete a survey.
- Use your Information to allow you to send messages to refer a friend or colleague to Adobe. By using this functionality, you represent to Adobe that you are entitled to use and provide Adobe with the referred person's name and email address.
- Disclose your Information to registered users of the Service, if you have requested that Adobe refer you to them.

**Tracking on the Business Catalyst Website.** This "Tracking" section replaces the section of the Adobe Online Privacy Policy entitled "Tracking, use of cookies, web beacon and similar devices." Adobe and its third party service providers may collect information that does not reveal your specific identity in a variety of ways, including:

- Through your browser: Certain information is collected by most browsers, such as your computer type (Windows or Macintosh), screen resolution, operating system version, referring URL and browser type and version. Adobe uses this information to ensure that our website functions properly and for analytics purposes.
- Using cookies: Cookies are pieces of information stored directly on the computer that you are using. Cookies allow Adobe to collect information such as browser type, time spent on the website, pages visited, language preferences, and features used. Adobe and its service providers use the information for security purposes, to facilitate navigation, to display information more effectively, and to personalize your experience while visiting the website, as well as for online tracking purposes. Adobe can recognize your computer to assist your use of the website. Adobe also gathers statistical information about the usage of the website in order to continually improve its design and functionality, understand how customers use it and assist it with resolving questions about it. Cookies further allow Adobe to select which of our content, advertisements and/or offers are most likely to appeal to you and display them while you are on the website. Adobe may also use cookies in online advertising to track consumer responses to our advertisements. Adobe may also collect data about your online activities on the website for use in providing content and

advertising tailored to your interests; if this occurs, you will be able to choose whether or not to have your information collected for such purpose. Please go to <http://businesscatalyst.com/Misc/optout.html> for more information.

You can adjust the settings in your browser to refuse to accept cookies. If you do, you may experience some inconvenience in your use of the website.

- Using pixel tags and other technologies: Pixel tags (also known as web beacons and clear GIFs) may be used in connection with some website pages and HTML-formatted email messages to, among other things, track the actions of users and email recipients, measure the success of Adobe's marketing campaigns and compile statistics about website usage and response rates.
- IP Address: Your "IP Address" is a number that is automatically assigned to the computer that you are using by your Internet Service Provider. An IP Address is identified and logged automatically in Adobe's server log files whenever a user visits the website, along with the time of the visit and the page(s) that were visited. Collecting IP Addresses is standard practice on the Internet and is done automatically by many web sites. Adobe uses IP Addresses for purposes such as calculating website usage levels, helping diagnose server problems, administering the website, providing (city/country-level) location-specific information such as intelligent defaults for country and time zone inputs, and compliance with export laws.

Your Access and Correction Rights. As set forth in the Adobe Online Privacy Policy, you may access and/or correct or delete the Information that Adobe has collected from you by writing to Adobe at: Adobe Systems Incorporated, Privacy Officer/Customer Information, Legal Department, A17, 345 Park Avenue, San Jose, CA 95110 2704 U.S.A. You may also email Adobe at privacy [officer@adobe.com](mailto:officer@adobe.com).

## **9. Purchases.**

Use of the Services is subject to your payment of fees, which may vary according to the plan and/or subscription you have chosen. Adobe is not liable for Partners' inability to collect payments from their clients. Adobe will collect the fees for the Services in advance, by payment card or by an invoice due upon receipt. No refunds will be issued, unless required by law or if Adobe is in material breach of this Agreement. You are responsible for paying all taxes levied in connection with your use of the Services. Your payment card company or bank may impose on you other fees in connection with your payment, and Adobe has no connection to or responsibility for such fees. In addition, you, and not Adobe, are responsible for obtaining and maintaining all telecommunications, broadband, and computer hardware, equipment, and services needed to access and use the Services, and paying all charges related thereto.

If you believe your invoice is incorrect, you must contact Adobe in writing within sixty (60) days of the applicable invoice date to be eligible to receive an adjustment or credit. Any such adjustments or credits shall be at Adobe's sole discretion.

Adobe reserves the rights to: (a) refuse to provide any person with the Services; (b) determine which Services are available for resale by Partners; and (c) offer certain Services for resale only by select Partners.

**Automatic Renewal of Subscriptions.** If you purchase a subscription to the Services, you will select the period of time for which you have elected to pay (the “Subscription Term”). Your subscription will automatically renew at the end of each Subscription Term until you cancel. On the subscription renewal date, Adobe will automatically charge your payment card for the next Subscription Term (“Billing Date”) plus any other applicable charges, including, without limitation, excess use and license fees. You may cancel your subscription at any time before your next Billing Date. If you do, you will have access to the Services until the end of your then-current Subscription Term.

**Payment Cards.** As a condition of your right to sign up for a subscription plan, you must provide Adobe with a valid payment card number belonging to you from a card issuer that Adobe accepts with available funds sufficient to pay the applicable fees. Such card must be associated with a valid address located in a jurisdiction into which Adobe sells the Services. Adobe may seek validation of your payment card prior to your first payment. In the event that you cancel the payment card or it is otherwise terminated, you must provide Adobe with a new valid payment card before the next Billing Date in order to avoid interruption in your access to the Services. Adobe may elect not to renew your subscription until a current valid payment card with sufficient funds is provided.

**Changes in Price and/or Terms.** Adobe may at any time, upon notice required by applicable law, (a) change the price of the Services; (b) institute new charges or fees; or (c) change these Additional Terms. Price and Terms changes and institution of new charges implemented during your Subscription Term will apply to subsequent Subscription Terms and to all new customers after the effective date of the change. If you do not agree to any such changes, then you must terminate your subscription (if any) and/or stop using the Services. Your continued use of the Services after the effective date of any such change shall constitute your acceptance of such change.

**Currency.** Unless Adobe in its discretion determines otherwise: (i) if you reside or are headquartered in the United States, you will be billed in U.S. dollars; (ii) if you reside or are headquartered in Australia or New Zealand, you will be billed in Australian dollars; and (iii) if you reside or are headquartered elsewhere, you will be billed in U.S. dollars, Euros or local currency (in Adobe’s sole discretion).

## **10. Delinquent Accounts.**

For the avoidance of doubt, any breach of your payment obligations will constitute a material breach of this Agreement. In addition to any other rights that Adobe may have under this Agreement or applicable law, Adobe reserves the right to suspend or terminate this Agreement and/or your use of the Services if you fail to pay any applicable fees or your account otherwise becomes delinquent. In addition, Adobe reserves the right to disable any web sites or other services maintained in connection with the Services if any applicable fees are thirty (30) days or more past

due. Past due fees are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all collection expenses. You agree that Adobe may charge any applicable fees (including past due fees) to your payment card.

Adobe reserves the right to impose a reconnection fee if your use of the Services is terminated or suspended and you thereafter request reconnection. You acknowledge and agree that Adobe has no obligation to retain Content (as defined below) and that both Content and End User Information may be irretrievably deleted if any applicable fees are thirty (30) days or more past due.

If you are receiving free use of the Services, Adobe reserves the right to suspend or terminate such use at any time, and to delete any Content and End User Information associated with such use.

## **11. Commissions.**

Certain Partners are eligible to accrue commissions at a rate and in the form defined in the terms of the plan you select. Commissions are accrued on the applicable invoiced amount at the time the invoice is paid. Cash commissions are payable on request through the Partner Portal when the accrued total exceeds USD 500 or the local currency equivalent according to the plan you select. Accrued commissions totaling less than USD 500 or the local currency equivalent are forfeited if this Agreement is terminated for any reason except Adobe's breach. Adobe reserves the right to modify the commission percentage and list prices at any time, however any such changes will not negatively affect your commission calculations until sixty (60) days after notice of such changes.

## **12. License to Use the Services.**

If you are a Site Owner, Adobe grants to you a non-exclusive, non-transferable, revocable right for the individual(s) identified at the time of purchase to access and use the Services for your own internal business purposes, subject to your compliance with this Agreement (including, without limitation, the payment of all applicable fees).

If you are a Partner, Adobe grants to you a non-exclusive, non-transferable, revocable right to resell the Services that you purchase, subject to your compliance with this Agreement (including, without limitation, the payment of all applicable fees). You acknowledge and agree that this Agreement does not transfer ownership of the Services to you, and you agree to assign, and hereby assign to Adobe, its successors and assigns, ownership of all intellectual property associated with the Services insofar as you obtain any right or interest therein.

You will not alter or remove any Marks or Adobe copyright notices included in the Services.

### **13. Service Limitations and Excess Fees.**

Certain Services may have limitations, which Adobe may change from time to time in its discretion. Adobe will charge you excess fees, as specified at <http://www.businesscatalyst.com/tou> excess fees, if you exceed such limitations. The Service limitations may involve (but are not limited to): (a) the number of individuals associated with you who are authorized to use the Services; (b) the amount of disk storage space, CPU load, and API calls available to you; (c) the amount of incoming traffic to your or your client's website; (d) the number of e-mail marketing broadcasts you may undertake per month on behalf of yourself or a client; and (e) the number of SMS messages available to you or a client;

Any failure by Adobe to notify you of excess usage shall not affect your responsibility to pay for it.

Adobe reserves the right, in its discretion, to impose and enforce limits on payment velocity (that is, the number of transactions per a certain unit of time) and any other feature of the Services. Enforcement by Adobe against a website may include blacklisting of the website's IP address.

### **14. Product Service Level.**

Adobe uses reasonable efforts to make the Services available 24 hours a day, 7 days a week. However, there will be occasions when the Services will be interrupted for maintenance, upgrades and repairs, or as a result of failure of telecommunications links and equipment that are beyond Adobe's control. Adobe will take reasonable steps to minimize such disruption, to the extent it is within Adobe's reasonable control. The Services may not be available in all languages.

If a Service includes e-mail marketing broadcasts, such broadcasts will be undertaken at any time during the date specified for such broadcasts, and may take up to 24 hours to deliver starting from the commencement of such broadcasts. Further, Adobe cannot guarantee the delivery of such broadcasts by third-party intermediaries. If a Service includes real-time alerts, such alerts will be sent as soon as possible, however Adobe cannot guarantee their delivery by third-party providers and aggregators or other intermediaries.

### **15. Marketing.**

If you are a Partner, you agree to promote the Services. Adobe may, but is under no obligation to, provide you with a non-exclusive license to use re-brandable material from time to time to support such marketing efforts.

### **16. Content.**



You (if you are a Site Owner) or your End Users (if you are a Partner), and/or each such party's respective licensors, retain ownership of any information, content and/or materials that they submit in the course of using the Services ("Content"); however, Adobe needs certain rights to Content in order to provide the Services. Accordingly, you hereby grant to Adobe and its service providers and designees a worldwide, non-exclusive, transferable, sublicensable (through multiple tiers), royalty-free, perpetual, irrevocable right and license, without compensation to you: to use, reproduce, distribute, adapt (including without limitation edit, modify, translate, and reformat), create derivative works of, transmit, publicly display and publicly perform such Content, in any media now known or hereafter developed.

You represent and warrant that you will comply with the provisions of Section 6 of the General Terms (User Conduct).

Without limiting the generality of the foregoing license, you agree that Adobe may access, use, remove and/or delete any Content in accordance with Section 6 of the General Terms.

### **17. Indemnity.**

In addition to the Indemnity obligations set forth in Section 19 of the General Terms, you agree to indemnify and hold Adobe and its subsidiaries, affiliates, officers, directors, employees, agents, co-branders or other partners, and licensors harmless from any claim or demand, including reasonable attorneys' fees, due to or arising out of the Content, the End User Information, or your violation of this Agreement.

### **18. Resolution of Disputes.**

This section hereby replaces Section 20(a) ("Resolution of Disputes") of the General Terms.

(a) If you are a resident of North America, then all matters relating to your access to, or use of, the Services shall be governed by the laws of the State of California, United States of America, without regard to conflict of laws principles thereof. You agree that any claim or dispute you may have against Adobe must be resolved by a court located in Santa Clara County, California, United States of America, except as otherwise agreed by you and Adobe, or as set forth in section (d) below. You agree to submit to the personal jurisdiction of the courts located in Santa Clara County, California, United States of America for the purpose of litigating such claims or disputes.

(b) If you reside outside of North America, then all matters relating to your access to, or use of, the Services shall be governed by the laws of Ireland, without regard to conflict of laws principles thereof. You agree that any claim or dispute you may have against Adobe must be resolved by a court located in Dublin, except as otherwise agreed by you and Adobe, or as set forth in section (c) below. You agree to submit to the personal jurisdiction of the courts located in Dublin for the purpose of litigating such claims or disputes.

(c) You and Adobe specifically disclaim the U.N. Convention on Contracts for the International Sale of Goods.

(d) For any claim (excluding claims for injunctive or other equitable relief) for less than U.S. \$10,000, the party requesting relief may elect to resolve the dispute in a cost-effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, it shall initiate such arbitration through an established alternative dispute resolution (“ADR”) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (A) the arbitration shall be conducted by telephone, online, and/or be based solely on written submissions, the specific manner shall be chosen by the party initiating the arbitration; (B) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (C) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(e) All claims you bring against Adobe must be resolved in accordance with this section. All claims filed or brought contrary to this section shall be considered improperly filed. Should you file a claim contrary to this section, Adobe may recover attorneys’ fees and costs up to U.S. \$1,000, provided that Adobe has notified you in writing of the improperly filed claim and you have failed to properly withdraw the claim.

(f) Notwithstanding the foregoing, in the event of your or others’ unauthorized access to or use of the Services in violation of the Agreement, you agree that Adobe shall be entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

## **19. Termination.**

This Agreement will continue to apply until terminated by either you or Adobe as set forth in the General Terms or in these Additional Terms. Upon termination, you shall promptly discontinue use of the Services; however, in addition to the sections set forth in Section 13(f) of the General Terms, the following sections of these Additional Terms shall survive termination: 1, 3, 5-9, 10, 13, 17-19 and 22. Adobe will not be liable to you or any third party for any damages that may result or arise out of Adobe’s termination of your account and/or access to the Services.

## **20. Filtering.**

Pursuant to 47 U.S.C. Section 230(d) as amended, we hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available on the two websites GetNetWise (<http://kids.getnetwise.org>) and OnGuard Online (<http://onguardonline.gov>). Please note that Company does not endorse any of the products or services listed at such site.

## **21. Notice for California Residents.**

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: If you have a question or complaint regarding the Site, please send an e-mail through the Adobe Customer Support Portal [https://www.adobe.com/go/support\\_contact](https://www.adobe.com/go/support_contact). You may also contact us by writing to 345 Park Avenue, San Jose, CA 95110 2704, or by calling us at 800 833 6687. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445 1254 or (800) 952 5210.

## **22. Miscellaneous.**

This Agreement does not, and shall not be construed to, create any partnership (notwithstanding the use of the term “Partner” to describe certain Adobe customers), joint venture, employer-employee, agency or franchisor-franchisee relationship between you and Adobe. Any heading, caption or section title contained herein is inserted only as a matter of convenience, and in no way defines or explains any section or provision hereof. Adobe will not be responsible for failures to fulfill any obligations due to causes beyond its control.

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