

## ADOBE CERTIFIED TRAINING PROVIDER AGREEMENT

Adobe Certified Training Provider ("ACTP") hereby agrees to the attached Terms and Conditions of this Adobe Certified Training Provider Agreement, including attached Exhibits, as amended from time to time. This Agreement is not binding unless it is accepted by Adobe in a written confirmation letter to ACTP.

CERTIFIED TRAINING PROVIDER:

Company Name or DBA:

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Authorized Signature

State/Jurisdiction of Incorporation,  
If Applicable:



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Printed Name

If Sole Proprietorship,  
Name of Owner:

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Title

If Partnership,  
Names of Partners:

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Date

Address:

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# ADOBE CERTIFIED TRAINING PROVIDER AGREEMENT

## TERMS AND CONDITIONS

Adobe and Certified Training Provider ("ACTP") hereby agree that the following terms and conditions shall govern Certified Training Provider's participation in the Adobe Certified Training Provider program. This contract is not effective until executed by ACTP and received and accepted by Adobe by written confirmation letter.

In consideration of the mutual promises and covenants contained in this Agreement, Adobe and ACTP hereby agree to the following:

### A. Definitions.

1. **"Adobe Certified Expert"** means an individual who has earned the Adobe Certified Expert Certificate and meets the requirements of the Adobe Certified Expert Program.
2. **"Agreement"** means this Adobe Certified Training Provider Agreement, including Exhibits, as amended by Adobe from time to time.
3. **"Certification Requirement"** means the requirements listed in Exhibit A, which may be changed by Adobe from time to time, provided, however, that modified Certification Requirements shall not apply to revoke previously obtained certification in relation to particular products.
4. **"Effective Date"** means the date specified in the confirmation letter ACTP receives from Adobe. This contract is not effective until it is accepted by Adobe in a confirmation letter and, if applicable, Adobe has received the Application Fee from ACTP
5. **"Logo"** means the Adobe Certified Training Provider Program logo provided by Adobe.
6. **"Major Upgrade"** means a product upgrade designated by a change in version number to the left of the decimal place, or otherwise designated as a Major Upgrade under this Agreement by Adobe. For example, unless otherwise designated by Adobe, Adobe Photoshop 4.1 is not a Major Upgrade under this Agreement, but Adobe Photoshop 5.0 is a Major Upgrade.
7. **"Marketing Information"** includes, but is not be limited to, stationery, business cards, advertisements, brochures, Web pages, training manuals, and other promotional information.
8. **"Materials"** means the ACTP Welcome Kit provided by Adobe and such other items, if any, provided by Adobe to ACTP under this Agreement.
9. **"Program Fee"** means a Program fee set forth in Exhibit A, as amended from time to time.
10. **"Trademark"** means the "Adobe Certified Training Provider" trademark in word form, and in any style or translated form.
11. **"ACTP"** means an organization that satisfies the Certification Requirements and offers Adobe product software classes with Adobe Certified Experts either in its own classrooms or at a ACTP's customer site .
12. **"Use Guidelines"** means the Adobe Certified Training Provider Trademark and Logo Use Guidelines and Restrictions set forth in Exhibit B, as amended from time to time by Adobe.

### B. Grant of License.

1. As of the Effective Date, and subject to the terms and conditions of this Agreement, Adobe hereby accepts ACTP as a participant in the Adobe Certified Training Provider Program.

2. Upon Adobe's receipt of satisfactory evidence of ACTP's successful completion of the Certification Requirements, (a) ACTP shall be eligible to receive the program benefits set forth on Exhibit A and (b) Adobe shall grant a nonexclusive, nontransferable right to use the Trademark and Logo as provided in this Agreement and in the Use Guidelines during the term of this Agreement, limited strictly to use in reference to ACTP's training services related to the particular versions of products for which certification has been granted. Adobe reserves the right to modify Exhibits A and B, from time to time on thirty (30) days notice to ACTP.

**C. Term and Termination.**

1. The term of this Agreement shall be a one year period from the Effective Date ("Initial Term"), unless earlier terminated by either party as provided herein.

2. The license granted in this Agreement with respect to any particular product shall expire ninety (90) days following the commercial release date of the next Major Upgrade of such product. Upon such expiration, ACTP shall immediately discontinue all use of the Trademark and Logo in relation to that version of the product. ACTP may use the Trademark and Logo in relation to the Major Upgrade if ACTP has obtained certification from Adobe in relation to the Major Upgrade by supplying satisfactory evidence of ACTP's successful completion of the then-current Certification Requirements for the Major Upgrade.

3. Either party may terminate this Agreement with or without cause upon thirty (30) days prior written notice. Without limiting the foregoing, ACTP expressly acknowledges that the Trademark and Logo are valuable intellectual property rights of Adobe and that Adobe may, in its sole discretion, choose to terminate this Agreement and the licenses hereunder (a) if for any reason Adobe does not approve of the nature or quality of ACTP's products or services rendered in conjunction with use of the Trademark or Logo, or (b) ACTP fails to remain in compliance with the Certification Requirements. Each party understands that the rights of termination or expiration hereunder are absolute. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other arising from or incident to any termination of this Agreement by such party or any expiration hereof which complies with the terms of the Agreement, whether or not such party is aware of any such damage, loss or expenses. In particular, without in any way limiting the foregoing, neither party shall be entitled to any damages on account of prospective profits or revenues.

4. Upon termination of this Agreement, all licenses to the Trademark and Logo shall terminate immediately and ACTP shall return to Adobe or destroy all Materials within thirty (30) days of the termination date. ACTP shall provide Adobe with written verification of such destruction.

**D. End User Licenses and Beta Software.**

1. ACTP agrees to be bound by the terms and conditions of all end user licenses for the Adobe software products used by ACTP. Notwithstanding the foregoing, in those situations in which ACTP will be using Adobe software product(s) at a customer site for training as contemplated herein, ACTP may make temporary copies of the Adobe software on secured ACTP customer computers, but only that number of copies for which there are registered students for the Adobe software product(s) class with ACTP and only if ACTP has a license for such number of copies, provided such Adobe software product copies are fully and completely deleted from all such computers at the end of each training class.

2. In no case shall ACTP make copies of Adobe beta software or use Adobe beta software in any training class.

**E. Limited Warranties and Limitation of Liability.**

1. ADOBE MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, RELATED TO OR ARISING IN ANY WAY OUT OF THIS

AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES UNDER THIS AGREEMENT, AND ADOBE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD-PARTY RIGHTS, EXCEPT INsofar AS CANNOT BE EXCLUDED OR LIMITED BY COMPULSORY LAW.

IN NO EVENT SHALL ADOBE BE LIABLE FOR INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OR THE INABILITY TO USE ANY OF THE MATERIALS, EVEN IF ADOBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**2** ADOBE'S LIABILITY (i) WITH RESPECT TO ANY PROVISION OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT, (ii) FOR ANY DAMAGES CAUSED BY A PRODUCT OR DEFECT OR FAILURE IN ANY PRODUCT, OR (iii) IN THE EVENT THAT A COURT OF COMPETENT JURISDICTION HOLDS ANY OF THE ABOVE WARRANTIES OR DISCLAIMERS OF WARRANTIES INVALID, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO ADOBE UNDER THIS AGREEMENT. ADOBE'S LIABILITY IS CUMULATIVE, WITH ALL OF ACTP'S LOSSES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. ACTP HEREBY RELEASES AND FOREVER DISCHARGES ADOBE FROM ANY AND ALL OBLIGATION, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THE FOREGOING LIMITATION THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION.

This Section shall survive termination or expiration of this Agreement for any reason.

#### **F. Indemnity.**

ACTP hereby agrees to indemnify and hold Adobe harmless against any and all claims, damages, losses and expenses, including the reasonable attorneys' fees arising out of or related to ACTP's performance hereunder that are caused, directly or indirectly, in whole or in part, by ACTP's negligent or illegal acts or omissions. The foregoing includes but is not necessarily limited to such claims made against Adobe by persons who purchase goods or services from ACTP.

This Section shall survive termination or expiration of this Agreement for any reason.

#### **G. No Other Product Warranties by ACTP.**

ACTP, its employees and agents, shall not have any right to make any representation, warranty, or promise on behalf of Adobe that is not explicitly stated in the Adobe product end user licenses, on the product label or container for Adobe products or authorized in writing by Adobe.

#### **H. Relationship of the Parties.**

ACTP is an independent contractor, and is solely responsible for payment of and will pay when due, all applicable business license fees, value added tax (VAT) and similar taxes, withholding taxes, and business and income taxes related to its activities under this Agreement. This Agreement and the relationship between the parties established hereby does not constitute a partnership, joint venture, agency, or contract of employment between them.

#### **I. Assignment.**

ACTP may not assign its rights or obligations under this Agreement without the prior written consent of Adobe. Any attempted assignment without such consent shall be void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**J. Attorney's Fees; Governing Law.**

In the event an action is commenced to enforce a party's rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and attorney's fees. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without reference to conflict of laws principles, and ACTP consents to jurisdiction and exclusive venue in any lawsuit arising hereunder in Santa Clara County, California, U.S.A.

**K. Miscellaneous.**

1. Each Exhibit attached hereto and the ACTP Welcome Kit delivered separately is incorporated by this reference and made a part of this Agreement as if its terms were fully set forth in the body of this Agreement. This Agreement constitutes the entire agreement between Adobe and ACTP, and supersedes and terminates any and all prior agreements or contracts, written or oral, entered into between the parties relating to the subject matter hereof. In the event of any inconsistency between this Agreement and the provisions in any purchase orders, the terms of this Agreement shall govern.
2. Any additional Program services, benefits or requirements added to this Agreement by written notice will be governed by the terms of this Agreement.
3. None of the provisions of this Agreement shall be deemed to have been waived by any act of acquiescence on the part of Adobe, its agents or employees, but may be waived only by an instrument in writing signed by an authorized officer of Adobe. No waiver of any provision of this Agreement shall constitute a waiver of any other provision or of the same provision on another occasion.
4. In the event that any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, then the other provisions hereof shall continue unabated and in full force and effect.

**EXHIBIT A**  
**TO ADOBE CERTIFIED TRAINING PROVIDER AGREEMENT**  
**BENEFITS AND REQUIREMENTS**

**Benefits of the Adobe Certified Training Provider Program**

1. ACTP will be listed on Adobe's World Wide Web site.
2. ACTP will receive an Adobe Certified Training Provider Certificate.
3. ACTP will be eligible to use the Adobe Certified Training Provider Logo for promotional materials, advertising and the like, subject to the terms and conditions of this Agreement.
4. Upon execution of Adobe's then current Beta Software agreement, ACTP will be eligible to receive pre-release (beta) versions of Adobe product software when and if available to participants of the Adobe Certified Training Provider program.

**Certification Requirements**

All of the following requirements must be met for EACH product or Major Upgrade for which ACTP seeks initial certification or to maintain certification under the terms and conditions of this Agreement:

1. ACTP's signed or electronic copy of this Agreement and the Adobe Certified Training Provider program application must be received and accepted by Adobe. This is a one-time requirement and need not be repeated for each product or version for which certification is sought as long as the Agreement is in force and has not expired or been terminated.
2. To be certified and maintain certification as an Adobe Certified Training Provider all (100%) of the ACTP's current and future Adobe product instructors must be certified as described in paragraph 3 below. ACTP's Adobe product instructors must maintain certification for Major Upgraded Adobe products within 90 days of first publication of Product Proficiency Exams for such Upgrades as described in paragraph 3 below.
3. Prior to certification for each Adobe product version, for each instructor that will teach any portion of an Adobe product course for which ACTP seeks certification, Adobe must receive information that the instructor has passed the appropriate Adobe Product Proficiency Exam in the form of an electronic score report from the testing provider or a valid copy of the printed score report received at the time of the exam. This is a continuing requirement and ACTP must update Adobe for each product or version for which certification is sought as long as the Agreement is in force and has not expired or been terminated. A passing score on an Adobe Product Proficiency Exam is good only for the particular product and version (including minor upgrades) that is the subject of the examination, and must be repeated when available for Major Upgrades to avoid expiration of the certification previously obtained by the instructor for the product. In addition, ACTP's instructors must successfully obtain and maintain a Verification of Instructor Skills as demonstrated by one of the methods set forth in accompanying Adobe Certified Training Provider application. The Verification of Instructor Skills is a one-time requirement and need not be repeated by ACTP's instructors for each product or version for which certification is sought as long as any such Verification is in force and has not expired or otherwise been terminated.

4. ACTP must deliver a minimum of one class per quarter on the current version of an Adobe product for which ACTP is authorized.
5. ACTP will submit a quarterly report to Adobe on the number of students attending each Adobe product class taught by ACTP during such quarter. In addition, ACTP will require all of its students in Adobe product classes to complete course and instructor evaluations. Upon Adobe's request, but no more than once a quarter, ACTP will provide all such evaluations to Adobe, with student names and organizations deleted if so desired by ACTP. ACTP shall comply fully with any applicable privacy protection regulations, data protection regulations and other applicable laws in relation to preparing and disclosing such information, including, if necessary, making appropriate registrations and securing all approvals or licenses required to enable transfer of the data to, and use by, Adobe in so far as is permitted under applicable law.
6. ACTPs that are schools or training centers must maintain a permanent training faculty with at least six (6) CPUs available for training purposes.
7. ACTP must have paid any applicable fees identified in the program application or accompanying materials.

**EXHIBIT B**  
**TO ADOBE CERTIFIED TRAINING PROVIDER AGREEMENT**

**ACTP TRADEMARK AND LOGO  
USE GUIDELINES AND RESTRICTIONS**

The following guidelines and restrictions on use of the Trademark and Logo are mandatory, and ACTP's failure to abide by these provisions may result in termination of this Agreement by Adobe.

1. Under no circumstances may the Trademark or Logo be used by ACTP in any manner unless and until ACTP has successfully complied with all Certification Requirements.
2. The Trademark or Logo may be used by ACTP in appropriate Marketing Information for an Adobe product class that is taught by an Adobe instructor certified for that product and version. ACTP agrees to avoid, and correct if necessary, any advertising or materials that might mislead customers as to which Adobe products and versions ACTP has obtained certification.
3. ACTP shall prominently use the Adobe trademark and logo in conjunction with all Adobe product trademarks. ACTP understands and acknowledges that it is the intention of this paragraph to minimize any opportunity for confusion by potential ACTP clients or customers.
4. ACTP must discontinue all use of the Trademark or Logo if ACTP fails to maintain the continuing Certification Requirements of the Agreement.
5. ACTP shall remedy any deficiencies in its use of the Trademark or Logo, as determined by Adobe in its sole discretion, as soon as reasonably possible but in no event less than thirty (30) days following notice from Adobe.
6. ACTP shall mark every use of the Trademark and Logo with the trademark designation (® or ™) as set forth in the Adobe Branding Guidelines and ACTP Web and Print Promotion Guidelines or as designated by Adobe from time to time. ACTP will reproduce the Logo only from artwork supplied by Adobe and in strict accordance with mechanical and size restrictions specified by Adobe as modified from time to time. Prior to using such Trademark and Logo, a copy of the advertising or promotional material must be sent to Adobe to ensure compliance with this Exhibit B.
7. ACTP acknowledges Adobe's ownership of the Trademark and Logo. ACTP shall employ best efforts to use the Trademark and Logo in a manner that does not derogate from Adobe's rights and will take no action that will interfere with or diminish Adobe's right in the Trademark or Logo. Further, ACTP shall not use the Trademarks in a manner which is likely to mislead any third party regarding ACTP's relationship to Adobe or in connection with any obscene, pornographic, libelous, or defamatory material, product or services.