

## **ADOBE® CONNECT™ HOSTED SUBSCRIPTION SERVICE AGREEMENT**

THIS ADOBE® CONNECT™ HOSTED SUBSCRIPTION SERVICE AGREEMENT IS BETWEEN ADOBE (DEFINED BELOW) AND “YOU” (COLLECTIVELY, THE “PARTIES”).

**BY USING THE SERVICE (DEFINED BELOW), YOU AGREE (A) THAT ENGLISH LAW GOVERNS YOUR USE OF THE SERVICE IF YOU ARE A RESIDENT OF ANY JURISDICTION *OTHER THAN* THE UNITED STATES, MEXICO, OR CANADA, (B) THAT CALIFORNIA LAW GOVERNS YOUR USE OF THE SERVICE IF YOU ARE A RESIDENT OF THE UNITED STATES, MEXICO, OR CANADA, AND (C) TO THE TERMS REGARDING GOVERNING LAW AND VENUE SET FORTH IN SECTION 17 (GOVERNING LAW).**

YOU AGREE THAT THIS AGREEMENT (DEFINED BELOW) IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY ON WHOSE BEHALF THE SERVICE IS USED: FOR EXAMPLE, YOUR EMPLOYER.

YOU MAY HAVE ANOTHER WRITTEN AGREEMENT DIRECTLY WITH ADOBE THAT SUPPLEMENTS OR SUPERSEDES ALL OR PORTIONS OF THIS AGREEMENT.

### **1. Definitions.**

“Add-In” means the Adobe Connect Add-in that may be provided to you by Adobe in connection with your use of the Service, and any modified versions and copies of, and upgrades, updates and additions to such add-in, provided to you by Adobe at any time. The Add-In is a client software upgrade automatically delivered to you on an as-needed basis so that you may use certain features of the Service (such as broadcasting audio or video).

“Adobe” means Adobe Systems Incorporated, a Delaware corporation, 345 Park Avenue, San Jose, California 95110, if subsection 17(a) of this Agreement applies; otherwise it means Adobe Systems Software Ireland Limited, 4-6 Riverwalk, Citywest Business Campus, Saggart, Dublin 24, Republic of Ireland, a company organized under the laws of Ireland and an affiliate and licensee of Adobe Systems Incorporated.

“Agreement” means these terms and conditions, the License Metrics, and the Adobe Online Privacy Policy, which is located at <http://www.adobe.com/go/privacy>, or any successor Web site thereto.

“Content” means all audio, video, multimedia, data, text, images, documents, computer programs, and any other information or materials uploaded by or on behalf of you in connection with your use of the Service.

“Information” means personally identifiable information.

“License Metrics” means terms set forth in a separate writing (such as a quote, order form or online order) describing the scope of your right to use the Service, such as the quantity of Named Hosts and the applicable Service Term. The License Metrics are incorporated by reference into this Agreement.

“Meeting” means an Adobe® Connect™ Hosted meeting, seminar, or webcast, as applicable.

“Meeting Attendees” means individuals who attend an online meeting, telephone conference, seminar, or webcast enabled by the Service and hosted by you.

“Named Host” means a named individual that has the ability to host a meeting with up to 25 total attendees on the Service platform. Named Hosts may create an unlimited number of meeting rooms; however, the Named Host can only use one room at any one time, and rooms cannot be accessed unless the Named Host

is present. Named Hosts must be individuals, not groups or generic logins, and a Named Host license cannot be shared between more than one individual.

“Participant” means a third party, including Meeting Attendees, who interacts with the Service as a result of such party’s relationship with or connection to you.

“Privacy Policy” shall have the meaning set forth in Section 12.1 (Privacy Terms).

“Service” means individually and collectively, the Adobe® Connect™ Hosted service and/or the Adobe® Connect™ family of services.

“Service Term” means the period of time for which you have elected to pay for and/or use the Service.

## **2. Use of the Service.**

2.1 Authority to Use Service. You represent and warrant that you have all necessary right, power and authority to enter into this Agreement and to perform the acts required of you hereunder including having a valid license to use the software applications that generate Content, and the right to submit Content and your or a Participant’s Information in connection with the Service. Otherwise, you are not permitted to submit such Content or Information to Adobe or the Service.

2.2 Access to Service. You acknowledge that your ability to access and use the Service may require the payment of third party fees (such as telephone toll charges, ISP, or airtime charges) and that you are responsible for paying such fees. Adobe is not responsible for any equipment or third party services you may need to be able to access and use the Service.

2.3 Log-In Information. To gain access to and use the Service, you may be required to create a log-in ID and password (“Log-In Information”). You are responsible for all activity occurring under your Log-In Information, and you must keep your Log-In Information confidential and not share your Log-In Information with third parties. Adobe has no obligation or responsibility with regard to your use, distribution, disclosure, or management of Log-In Information. Notwithstanding the foregoing, Adobe may require you to change your Log-In Information if such Log-In Information is inconsistent with the terms of this Agreement.

2.4 Limitations. Without limiting the foregoing, the Service is not designed or licensed for use in hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems. Without limiting the generality of the foregoing, Adobe, its affiliates, suppliers, licensors, and resellers specifically disclaim any express or implied warranty of fitness for such purposes.

## **3. License.**

3.1 The Service. Subject to your compliance with the terms and conditions of this Agreement, Adobe grants to you a non-exclusive, non-transferable, revocable right to access and use the Service according to the terms and conditions of this Agreement and the applicable License Metrics.

3.2 The Add-In. The terms in this Section 3.2 (The Add-In) apply to you solely if the License Metrics indicate you have a license to use Adobe Connect.

3.2.1 License. Subject to the terms and conditions of the Agreement, Adobe grants to you a non-exclusive, non-transferable, revocable license to install and use the Add-In solely in conjunction with the Service. You shall not modify, port, adapt or translate the Add-In. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Add-In. You cannot use the Add-In on a timeshare or service bureau basis or host, on a subscription basis or otherwise, or use the Add-In to utilize any functionality of the Service for a third party.

3.3 Adobe Presenter. The number of copies of Adobe Presenter installed or used by you or Participants must coincide with the number of Adobe Presenter licenses purchased by you, if any, as set forth in the

applicable License Metrics. The terms of this Section 3.3 (Adobe Presenter) are in addition to any terms contained in an end user license agreement accompanying Adobe Presenter.

#### **4. Ownership of the Service and Marks.**

You acknowledge that Adobe and its licensors own all right, title, and interest in: (a) the Service; (b) any Adobe software provided in connection with the Service; and (c) all graphics, logos, service marks, and trade names, including third-party names, product names, and brand names used by Adobe in connection with the Service (the “Marks”). You shall not alter or remove any Marks or Adobe copyright notices included in the Service. Notwithstanding the foregoing, you or your respective licensors, as applicable, own all right, title, and interest in and to any graphics, logos, service marks, and trade names used by you in connection with the Service. You are welcome to send suggestions on improving the Service, but in doing so, you acknowledge and agree that such suggestions will become the property of Adobe, and Adobe has no obligation to compensate you for such suggestions.

#### **5. Trial Use of Service.**

This Section 5 (Trial Use of Service) applies to you solely if you have subscribed to the Service on a trial basis.

5.1 Trial Use. In addition to the other terms of this Agreement, as a trial user of the Service, your right to access and use the Service is limited as provided in the e-mail communication from Adobe acknowledging your right to use the Service, or as provided in the Web pages describing trial use of the Service. This trial Service might be offered by Adobe at a later time with different features, for a fee, or not at all, as determined by Adobe in its sole discretion. In order to maintain a consistent quality of service, Adobe reserves the right to temporarily suspend trial access to the Service as needed.

5.2 Termination of Trial Service. Your right to use the Service on a trial basis shall terminate immediately upon expiration of the limited time period granted at the time you subscribed to the Service on a trial basis. In addition, Adobe reserves the right, for any reason in its sole discretion without prior notice, to discontinue or suspend your trial use, and to terminate your trial account. Your rights and the rights of Participants to access Content submitted to your account and processed by the Service shall terminate immediately upon termination of your right to use the Service.

#### **6. Term and Termination.**

6.1 Term. The term of this Agreement is specified in the License Metrics.

6.2 Termination.

6.2.1 By Adobe. Adobe may at any time and upon written notice to you immediately terminate this Agreement and your access to the Service, or suspend or restrict your access to the Service in whole or in part, if:

(a) you breach this Agreement and do not cure such breach within five (5) business days of receiving written notice of the breach from Adobe;

(b) you breach Section 3 (License) or Section 4 (Ownership of the Service and Marks) of this Agreement;  
or

(c) Adobe determines in its sole and exclusive judgment that terminating your access to the Service is advisable for security reasons, to protect Adobe from liability, or for the continued normal and efficient operation of the Service.

6.2.2 By You. You may terminate this Agreement or your subscription to the Services at any time for any reason or no reason by contacting Adobe customer service or by visiting the “Administration” area of the Service.

6.3 Effect of Termination. Upon termination of this Agreement, you must immediately cease using the Service. Adobe reserves the right to delete any data files associated with Content, Information, or your or use of the Service upon termination of the Service. The following Sections of this Agreement shall survive termination of this Agreement: 1, 4, 6.3, 7-12, and 14-20.

## **7. Content.**

7.1 Your Content. You may upload Content to the Service in connection with your use of the Service. Adobe does not verify, endorse, or claim ownership of any Content, and you retain all right, title, and interest in and to the Content. Your Content and the Content of Participants may be stored on Adobe's servers at your request as necessary for Adobe to provide the Service and in accordance with Adobe's then-current storage policies. You are solely responsible for Content including making and keeping back up copies of Content. Adobe shall use commercially reasonable efforts to block the uploading of Content to the Service that contains viruses detected by using industry standard virus detection software. Notwithstanding anything to the contrary herein, Adobe has no responsibility or liability for the deletion or accuracy of Content, the failure to store, transmit or receive transmission of Content (whether or not processed by the Service), or the security, privacy, storage, or transmission of other communications originating with or involving use of the Service. Certain features of the Service enable you to specify the level at which such Service restrict access to your Content. You are solely responsible for applying the appropriate level of access to your Content.

7.2 Your Representations and Warranties Regarding Content. You represent and warrant that (a) you are the owner, licensor, or authorized user of all Content; and (b) you will not upload, record, publish, post, link to, or otherwise transmit or distribute Content that: (i) advocates, promotes, incites, instructs, assists or otherwise encourages violence or any illegal activities; (ii) infringes or violates the copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual property rights of any third party or Adobe, or any rights of publicity or privacy of any party; (iii) attempts to mislead others about your identity or the origin of a message or other communication, or impersonates or otherwise misrepresents your affiliation with any other person or entity, or is otherwise materially false, misleading, or inaccurate; (iv) promotes, solicits or comprises inappropriate, harassing, abusive, profane, defamatory, libelous, threatening, hateful, obscene, indecent, vulgar, pornographic or otherwise objectionable or unlawful content or activity; (v) is harmful to minors; (vi) 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 (vii) violates any law, statute, ordinance, or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising).

7.3 Adobe Access to Content. You acknowledge that the Service is automated (e.g., Content is uploaded using software tools) and that Adobe personnel will not access, view, or listen to any Content, except as reasonably necessary to perform the Service, including but not limited to the following: (a) respond to support requests; (b) detect, prevent, or otherwise address fraud, security, or technical issues; (c) as deemed necessary or advisable by Adobe in good faith to conform to legal requirements or comply with legal process; or (d) enforce this Agreement, including investigation of potential violations hereof, as further described in Section 11 (Investigations).

## **8. Notification of Copyright Infringement.**

8.1 Adobe respects intellectual property rights and expects its users to do the same. Adobe will respond to clear notices of copyright infringement consistent with the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c)(2) (“DMCA”), and its response to such notices may include removing or disabling access to the allegedly infringing content, terminating the accounts of repeat infringers, and making good-faith attempts to contact the user who posted the content at issue so that they may, where appropriate, make a counter-notification.

8.2 If you believe that your work has been used or copied in a way that constitutes copyright infringement and such infringement is hosted on the Service, or on sites linked to or from the Service or in connection with the Service, please provide, pursuant to the DMCA, written notification via regular mail or via fax (not via email or phone) of claimed copyright infringement to Adobe’s Copyright Agent (contact information below), which must contain all of the following elements:

8.2.1 A physical or electronic signature of the person authorized to act on behalf of the owner of the copyright interest that is alleged to have been infringed;

8.2.2 A description of the copyrighted work(s) that you claim have been infringed and identification of what content in such work(s) is claimed to be infringing and which you request to be removed or access to which is to be disabled;

8.2.3 A description of where the content that you claim is infringing is located on the Service;

8.2.4 Information sufficient to permit Adobe to contact you, such as your physical address, telephone number and e-mail address;

8.2.5 A statement by you that you have a good faith belief that the use of the content identified in your notice in the manner complained of is not authorized by the copyright owner, its agent or the law; and

8.2.6 A statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner’s behalf.

8.2.7 Before you file such a notification, please carefully consider whether or not the use of the copyrighted content at issue is protected by the ‘fair use’ doctrine, as you could be liable for costs and attorneys’ fees should you file a takedown notice where there is no infringing use. If you are unsure whether a use of your copyrighted content constitutes infringement, please contact an attorney before you file your notice, or reference the content publicly available at [www.chillingeffects.org](http://www.chillingeffects.org).

8.3 If you believe access to your content was disabled or removed by Adobe as a result of an improper copyright infringement notice, please provide, pursuant to the DMCA, written notification via regular mail or via fax (not via email or phone) to Adobe’s Copyright Agent (contact information below), which must contain all of the following elements:

8.3.1 A physical or electronic signature of the subscriber;

8.3.2 Identification of the content that was removed from the Service and the location on the Service at which the content appeared before it was removed;

8.3.3 A statement under penalty of perjury that you have a good faith belief that the content was removed or disabled as a result of mistake or misidentification of the content to be removed or disabled;

8.3.4 Information sufficient to permit Adobe to contact you, such as your physical address, telephone number and e-mail address; and

8.3.5 A statement that you consent to the jurisdiction of the Federal District court for the district where you reside (or Santa Clara County, California if your residence is outside of the United States) and that you will accept service of process from the person who provided notification under DMCA subsection (c)(1)(C) or an agent of such person.

Before you file such a counter notification, please carefully consider whether or not the use of the copyrighted content at issue is infringing, as you could be liable for costs and attorneys' fees in the event that a court determines your counter notification misrepresented that the content was removed by mistake. If you are unsure whether use of the content at issue constitutes infringement, please contact an attorney before you file your notice, or reference the content publicly available at [www.chillingeffects.org](http://www.chillingeffects.org).

8.4 Adobe's Designated Agent for notice of claims of copyright infringement can be reached as follows:

By mail: Copyright Agent  
Adobe Systems Incorporated  
801 North 34th Street  
Seattle, WA 98103

By fax: (206) 675-6818

By email: [copyright@adobe.com](mailto:copyright@adobe.com)

By telephone: (408) 536-4030

The Designated Agent will not remove content from the Service in response to phone or email notifications regarding allegedly infringing content, since a valid DMCA notice must be signed, under penalty of perjury, by the copyright owner or the person authorized to act on his or her behalf. Please submit such notifications by fax or ordinary mail only. The Designated Agent should be contacted only if you believe that your work has been used or copied in a way that constitutes copyright infringement and such infringement is occurring on the Service or on sites linked to or from the Service, or in connection with the Service. All other inquiries directed to the Designated Agent will not be responded to. Such inquiries should be made through the feedback procedure referenced in this Section 8.

## **9. Links and Online Services.**

9.1 Links. Adobe may provide links to other Web sites or resources as part of the Service as a convenience to you. Adobe is not responsible for the contents, products or services on any third party site, and the inclusion of any link does not imply that Adobe endorses the content on such third party sites. You may visit such third party sites solely at your own risk.

### 9.2 Online Services.

9.2.1 The Services may facilitate your access to APIs or other websites maintained by Adobe or its affiliates or third parties offering services (e.g., usage reporting services) ("Online Services"). Your access to and use of any website or online services is governed by the terms, conditions, disclaimers and notices found on such site or otherwise associated with such services, for example, the Terms of Use located at <http://adobe.com/misc/terms.html>. Adobe may at any time, for any reason, modify or discontinue the availability of any website and Online Services.

9.2.2 Adobe does not control, endorse or accept responsibility for websites or Online Services offered by third parties. Any dealings between you and any third party in connection with a website or Online Services, including delivery of and payment for goods and services and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party.

9.2.3 EXCEPT AS EXPRESSLY AGREED BY ADOBE OR ITS AFFILIATES OR A THIRD PARTY IN A SEPARATE AGREEMENT, YOUR USE OF WEBSITES AND ONLINE SERVICES IS AT YOUR OWN RISK UNDER THE WARRANTY AND LIABILITY LIMITATIONS OF SECTIONS 15 (DISCLAIMER OF WARRANTIES) AND 16 (LIMITATION OF LIABILITY).

## **10. Conduct.**

10.1 Use Restrictions. In connection with your access or use of the Service, you agree not to:

(a) introduce a virus, worm, Trojan horse or other harmful software code or similar files that may damage the operation of a third party's computer or property or information;

(b) use the Service in any manner that could damage, disable, overburden, or impair any Adobe server, or the network(s) connected to any Adobe server or interfere with any other party's use and enjoyment of the Service;

(c) attempt to gain unauthorized access to service, materials, other accounts, computer systems or networks connected to any Adobe server or to the Service, through hacking, password mining, or any other means;

(d) obtain or attempt to obtain any materials or information through any means not intentionally made available through the Service;

(e) host, on a subscription, membership, or pay-per-use basis or otherwise, the Service, including any related application, (i) to permit a third party to use the Service to create, transmit, or protect any content, or (ii) to conduct conferences, online meeting services, or training sessions for a third party;

(f) engage in any systematic extraction of data or data fields, including without limitation e-mail addresses;

(g) disclose, harvest, or otherwise collect Information, including e-mail addresses, or other private information about any third party without that party's express consent;

(h) transmit junk mail, spam, surveys, contests, pyramid schemes, chain letters, or other unsolicited e-mail or duplicative messages;

(i) sell, resell, lend, lease, or rent access to or use of the Service or any portion of the Service, or otherwise transfer any rights to use or access the Service (including without limitation, on a subscription, membership, pay-per-use, time share, computer service business, or service bureau basis);

(j) bundle or incorporate the Service with or into any other service, offering, or solution for sale, resale, rent, or lease to third parties;

(k) defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others;

(l) upload, or otherwise make available, files that contain images, photographs, software, or other material protected by intellectual property laws, including, for example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consent to do the same; or

(m) use the Service for malicious injection of dial tone multi-frequency ("DTMF") commands.

10.2 Exposure. You acknowledge and agree that by accessing or using the Service, you may be exposed to materials from third parties that are offensive, indecent, or otherwise objectionable. You may report any violations of these terms to Adobe customer service.

## **11. Investigations.**

Adobe does not generally monitor user activity occurring in connection with the Service. If Adobe becomes aware, however, of any possible violations by you of Sections 7.2 (Your Representations and Warranties Regarding Content), 10.1 (Use Restrictions), or any other provision of this Agreement, Adobe reserves the right to investigate such violations, and Adobe may, at its sole discretion, terminate immediately your license to use of the Service or change, alter or remove Content, in whole or in part, without prior notice to you. If, as a result of such investigation, Adobe believes that criminal activity has occurred, Adobe reserves

the right to refer the matter to, and to cooperate with, any and all applicable law enforcement authorities. Adobe is entitled, except to the extent prohibited by applicable law, to disclose any information, including Information, about you in Adobe's possession in connection with your use of the Service to law enforcement or other government officials, as Adobe in its sole discretion believes to be necessary or appropriate.

You agree to indemnify and hold Adobe harmless from and against any and all liabilities, costs and expenses, including reasonable attorneys' fees, related to or arising from your Content, the Content of Participants, and your or any Participant's use of the Service, including any use that violates this Agreement.

## **12. Privacy.**

12.1 Privacy Terms. The terms of the Adobe Online Privacy Policy ("Privacy Policy"), located at <http://www.adobe.com/go/privacy>, or any successor website thereto, and the terms of this Section 12 (Privacy) govern Adobe's collection and use of Information in connection with the Service. If there is any conflict between the terms of the Privacy Policy or the terms of this Agreement, the terms of this Agreement shall control. Any collection of Information from Participants initiated by you will be stored on Adobe's servers in accordance with Adobe's then-current storage policies, but such collection is subject to your privacy statement, and the Privacy Policy shall not apply to such collection. Adobe may make changes to the Privacy Policy from time to time, and such changes will be communicated to you in the text of the Privacy Policy. Please visit the Privacy Policy regularly for updates.

12.2 Non-U.S. Residents. You agree and acknowledge that your Information collected through the Service or in connection with the Service may be transferred across national boundaries and stored and processed in any of the countries around the world in which Adobe maintains offices, including the United States.

12.3 Types of Information Collected. In addition to the types of Information set forth in the Privacy Policy, Adobe may collect certain information as set forth in this Section 12.3 (Types of Information Collected).

12.3.1 Service Use Information. Adobe may collect information regarding your use of the Service, such as the time and date you click through and accept these terms and conditions, the name of the Internet service provider and the Internet Protocol address through which you access the Internet; the time you access the Service; and the Internet address of any referring Web site and the Internet address of the Web site from which you linked directly to Adobe's web site. Adobe uses this information to support the Services and, if you have opted-in to receive communications from Adobe, to send to you communications about Adobe, its products and services.

12.3.2 Information Collected with Connect. At your request, the Service may collect certain information, including but not limited to: (a) which meeting slides were viewed by you and by Meeting Attendees; (b) your answers and the answers of Meeting Attendees to polls initiated by you; (c) real time "chat" between users of the Service and between users and you; and (d) any other information you provide to the Service, such as your name, address, phone number, e-mail address, or any other personally identifying information. The Service will record such information. You may see such information, and some information, such as "chat" or your questions, may be shared with and stored by other users of the Service at your request or as an automatic function of the Service. Except as otherwise stated in Section 11 (Investigations), Adobe does not share your Information with any other third parties.

12.4 Notice Regarding Recording and Privacy. THE CONNECT SERVICE MAY ALLOW YOU TO RECORD MEETINGS AND TO COLLECT AND UTILIZE IDENTIFYING INFORMATION ABOUT YOU AND MEETING ATTENDEES, SUCH AS YOUR NAME, VOICE, OR LIKENESS. THE LAWS OF SOME STATES OR COUNTRIES REQUIRE (A) A MEETING ATTENDEE TO GRANT HIS/HER CONSENT PRIOR TO ANY RECORDING OF COMMUNICATIONS; AND (B) RESTRICTIONS ON THE COLLECTION, STORAGE, AND USE OF PERSONALLY IDENTIFYING INFORMATION. You are responsible for ensuring collection of all such consents and compliance with all such restrictions, and therefore you shall indemnify, defend, and hold Adobe harmless from any claim or suit connected to recordings by you of the communications and likeness of Meeting Attendees.

12.5 Storage and Use of Information. Adobe stores your Information and the Information of Participants in accordance with Adobe's then-current storage policies and as requested by you. Adobe will delete your Information and Information of Meeting Attendees and other Participants from Adobe's servers ultimately when this Agreement terminates and in accordance with Adobe's then-current data storage policies.

12.6 Security. Adobe has implemented technical safeguards and procedures to protect communications with the Service including communication of Content and Information. In addition, Adobe will only disclose Content and Information in accordance with instructions provided by you through use of the Service and as otherwise provided in the Privacy Policy. Notwithstanding the foregoing, the security of communications sent over the Internet (including by e-mail) is subject to many factors outside of Adobe's control and, as a result, Adobe does not guarantee the security or privacy of such communications. For more information on the security measures Adobe has implemented with respect to the Service, please see the applicable Service documentation.

12.7 Communications from Adobe.

12.7.1 Service E-Mails. Notwithstanding any communications preferences indicated by you, Adobe may send to you service-related e-mails regarding service maintenance events or modifications to the functionality or delivery of the Service.

12.7.2 Communications from Adobe to U.S. Trial Users. THE TERMS OF THIS SECTION 12.7.2 (COMMUNICATIONS FROM ADOBE TO U.S. TRIAL USERS) APPLIES TO YOU SOLELY IF YOU HAVE SUBSCRIBED TO THE SERVICE ON A TRIAL BASIS AND RESIDE IN THE UNITED STATES. NOTWITHSTANDING ANY COMMUNICATIONS PREFERENCES INDICATED BY YOU IN CONNECTION WITH YOUR CREATION OF LOG-IN INFORMATION OR OTHERWISE, YOU AGREE THAT ADOBE MAY CONTACT YOU REGARDING THE SERVICE DURING THE TERM OF YOUR TRIAL SUBSCRIPTION.

12.8 Information of Participants. As between Adobe and you, you shall have sole responsibility for any and all Information of Participants used and submitted in connection with the Service, and Adobe shall have no responsibility in connection thereto. You shall comply with all data protection and privacy laws and rules applicable to Information of Participants. You shall defend, indemnify, and hold harmless Adobe from any claim, suit or proceeding brought against Adobe by a Participant in connection with any acts or omissions with regards to such Information of Participants. E-mails related to the Service are generally sent to Participants by you and not by Adobe. As a result, even though certain Participants may have opted-out from receiving communications from Adobe, such Participants may receive certain Service-related e-mails sent by you.

### **13. Service Level Agreement.**

13.1 Service Availability Objective. Adobe's objective is to make reasonable efforts to provide Service Availability of 99.9% as measured on a monthly basis ("Service Availability Objective"). Service Availability is defined as the time that the Service is capable of receiving, processing, and responding to requests, excluding (a) Scheduled Maintenance, (b) Customer Error Incidents, and (c) Force Majeure. Service Availability is calculated as a percentage by dividing the number of minutes the Service is available during the applicable month by the number of total minutes in the applicable month, excluding in all cases Scheduled Maintenance, Customer Error Incidents, and Force Majeure.

13.2 Remedy for Failure to Achieve Service Availability Objective. At your request Adobe will calculate your Service Availability during a given calendar month. In the event that the Service Availability Objective was not met in a given month, then for each day in such month that the duration of the Service unavailability exceeds four (4) continuous hours, you are entitled to receive a one (1) day Service credit, subject to the Agreement and requirements of this Section 13 (Service Level Agreement). For purposes of calculating the Service Availability Objective, Adobe will only consider the Service unavailable if you opened a trouble ticket relating to the Service unavailability with the Adobe customer support department within three (3) business days of the Service unavailability. To obtain a credit for Adobe's failure to meet the Service Availability Objective, you must request such credit in writing no later than the calendar month

following the month of the Service unavailability giving rise to your credit request. In the event of a conflict between the data in your records and Adobe's records, the data in Adobe's records shall prevail. Any Service credit due hereunder will be applied to your account at the conclusion of the then-current Service Term. If you purchased the Service on a monthly or pay-per use basis, you are not eligible for any credits arising from or relating to Service unavailability. The Service credit offered in this Section 13 (Service Level Agreement) shall be your sole and exclusive remedy for any failure of the Service or any failure of Adobe to meet the Service Availability Objective. Any unused Service credits shall expire upon termination of this Agreement.

### 13.3 Definitions.

13.3.1 Scheduled Maintenance is defined as any maintenance performed during Adobe's standard maintenance windows (currently occurring between Saturday 12:01am Pacific Time and Sunday at 11:59pm Pacific Time, and weekdays between 6:00pm Pacific Time and 11:59pm Pacific Time) and any other maintenance of which you are given at least forty-eight (48) hours advance notice. Adobe may perform maintenance on some or all of the Service in order to upgrade hardware or software that operates or supports the Service, implement security measures, or address any other issues it deems appropriate for the continued operation of the Service.

13.3.2 Customer Error Incident is defined as any Service unavailability resulting from your applications, Content, or your equipment, or the acts or omissions of any user of the Service.

13.3.3 Force Majeure is defined as acts of God, terrorism, labor action, fire, flood, earthquake, governmental acts, orders, or restrictions, denial of service attacks and other malicious conduct, utility failures, or any other cause of Service unavailability that was beyond Adobe's reasonable control.

## 14. Payment Terms.

14.1 Subscription Fees. Use of the Services is subject to your payment of fees (the "Subscription Fees"), which may vary according to the subscription option to which you have subscribed and/or the period of time for which you have elected to pay for the Services (the "Subscription Term").

Adobe will collect the Subscription Fees for the Services (a) in advance of each Subscription Term for certain subscription options; or (b) daily based on your use of the Service for certain other subscription options. You are responsible for paying all taxes levied in connection with your use of the Services. For additional information on payment and taxes, please visit the Adobe Store at [http://kb2.adobe.com/cps/167/tn\\_16719.html](http://kb2.adobe.com/cps/167/tn_16719.html) or any successor Web site thereto. Your credit card company or bank may impose on you other fees in connection with your payment of the Subscription Fees, and Adobe has no connection to or responsibility for such fees.

14.2 Automatic Renewal of Subscriptions. For most subscription options, your subscription to the Services will automatically renew at the end of each Subscription Term until you cancel your subscription. In connection with these options, on the subscription renewal date, Adobe will automatically charge your payment card for the next Subscription Term ("Billing Date"). You can find your Billing Date in the "Administration" area of the Service. You will receive a receipt via email once your card has been charged. You may cancel your subscription at any time before your next Billing Date by contacting Adobe customer service or by visiting the "Administration" area of the Service and clicking the 'cancel' button at the bottom of the "Change Service Plan" page. You will have access to the Services until the end of your then-current Subscription Term.

14.3 Nonrefundable Fees. All Subscription Fees paid by you in relation to a subscription to the Services are nonrefundable.

14.4 Payment Cards. As a condition to your right to use the Services, 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 Subscription Fees. Adobe may seek validation of your payment card

account prior to your first purchase. In the event that you cancel this 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 or to suspend your subscription until a current valid payment card with sufficient funds is provided.

14.5 Changes in Price and/or Terms. Adobe may at any time, upon notice required by applicable law, (a) change the price of subscriptions for the Services or any part thereof, (b) institute new charges or fees, or (c) change this Agreement. Price and Agreement changes and institution of new charges implemented during your subscription term will apply to subsequent Subscription Terms and to all new subscribers after the effective date of the change. If you do not agree to any such changes, then you must terminate your subscription to the Services and 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.

14.6 Collection of Service Fee. You agree that in the event Adobe is unable to collect the Subscription Fees owed by you to Adobe for the Services, Adobe may take the steps it deems necessary to collect such Subscription Fees from you and that you will be responsible for all costs and expenses incurred by Adobe in connection with such collection activity.

## **15. DISCLAIMER OF WARRANTIES.**

15.1 THE SERVICE AND THE ADD-IN ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE BASIS” “WITH ALL FAULTS” AND WITHOUT WARRANTY OF ANY KIND. TO THE FULL EXTENT PERMITTED BY LAW, ADOBE, ITS AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, RESELLERS, LICENSORS, AND ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICE AND THE ADD-IN DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEM INTEGRATION OR COMPATIBILITY, WORKMANLIKE EFFORT, LACK OF NEGLIGENCE, QUIET ENJOYMENT, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, ADOBE DOES NOT WARRANT OR REPRESENT THAT THE SERVICE WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT ADOBE’S SERVERS AND SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ADOBE’S SECURITY PROCEDURES AND MECHANISMS WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO INFORMATION OR CONTENT BY THIRD PARTIES.

15.2 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

## **16. Limitation of Liability.**

16.1 NEITHER ADOBE NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE THE SERVICE OR ANY SOFTWARE OR ACCESS DATA, INFORMATION OR CONTENT, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE AND BASED ON ANY THEORY OF LIABILITY INCLUDING STATUTE, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADOBE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

16.2 ADOBE'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE SERVICE IN THE LAST TWELVE (12) MONTHS, IF ANY. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED. ADOBE'S SUPPLIERS SHALL HAVE NO LIABILITY TO YOU FOR ANY REASON.

16.3 THE LIMITATIONS ON LIABILITY IN THIS SECTION 16 (LIMITATIONS OF LIABILITY) ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE. Nothing contained in this Agreement limits Adobe's liability to you in the event of death or personal injury resulting from Adobe's gross negligence.

### **17. Governing Law.**

By accessing and using the Service, you and Adobe agree that all matters relating to this Agreement and your access to, or use of, the Service shall be governed by and construed in accordance with the substantive laws in force in: (a) the State of California, if you are a resident of the United States, Canada, or Mexico; or (b) England, if you are a resident of any jurisdiction not described in Section 17(a) herein. The respective courts of Santa Clara County, California when California law applies and the competent courts of London, England, when the law of England applies, shall each have non-exclusive jurisdiction over all disputes relating to this Agreement. This Agreement will not be governed by the conflict of law rules of any jurisdiction, UCITA, or the United Nations Convention on Contracts for the International Sale of Goods, the application of which are expressly excluded.

### **18. Language.**

It is the express wish of the Parties that the Agreement and all related documents have been drawn up in English and that the English version of this Agreement shall be the sole version used in interpreting and enforcing this Agreement. C'est la volonté expresse des Parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

### **19. Export Control Laws.**

The export and re-export of certain software, Content, and services are controlled by the United States export and re-export laws and regulations (including Export Administration Regulations), and such software, Content, and services may not be exported or re-exported to Cuba, Iran, North Korea, Sudan, Syria, or any country to which the United States embargoes goods. In addition, certain software, Content, and services may not be distributed to individuals who are on the Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals. You warrant that you are not a national of Cuba, Iran, North Korea, Sudan, Syria or any country to which the United States embargoes goods, and that you are not a person on the Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals. You further warrant that you will abide by U.S. and other applicable export control laws.

### **20. Miscellaneous.**

You are solely responsible for your familiarity and compliance with any laws that may prohibit you from participating in or using any part of the Service. If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the Parties, and all other provisions will remain in full force and effect. Adobe's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless

acknowledged and agreed to by Adobe in writing. Your rights hereunder may not be assigned or transferred to any third party. Each Party will provide the other with written notice under this Agreement by sending the other party notice as follows: (a) for you, notice will be sent to the e-mail address associated with your account, and (b) for Adobe, notice will be sent to Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA 95110, Attention: General Counsel. In the event the terms of this Agreement, the Privacy Policy, or the License Metrics conflict, the documents shall have the following order of precedence: (i) the License Metrics, (ii) the Agreement, and (iii) the Privacy Policy. This Agreement, including the Privacy Policy and License Metrics, constitutes the entire agreement between you and Adobe and supersedes all prior agreements, representations, and understandings between the Parties regarding the subject matter contained herein.

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