

## ADOBE CAPTIVATE PRIME PARTICIPANT TERMS OF USE

THESE ADOBE CAPTIVATE PRIME PARTICIPANT TERMS OF USE (AS AMENDED FROM TIME TO TIME) (THE "**AGREEMENT**") IS BETWEEN ADOBE SYSTEMS INCORPORATED AND ITS AFFILIATES (COLLECTIVELY, "**ADOBE**"), AND "**YOU**," THE INDIVIDUAL ACCESSING OR USING THE ADOBE CAPTIVATE PRIME SERVICE AND ANY AFFILIATED HOSTED APPLICATIONS (COLLECTIVELY, THE "**SERVICE**").

THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. BY ACCESSING OR USING THE SERVICE OR DOWNLOADING THE APPLICATION, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. ADOBE MAY CHANGE, ADD, OR REMOVE ANY PART OF THIS AGREEMENT, OR ANY PART OF THE SERVICE, AT ANY TIME. IF ANY FUTURE CHANGES ARE UNACCEPTABLE TO YOU, YOU SHOULD DISCONTINUE USING THE SERVICE. YOUR CONTINUED USE OF THE SERVICE, NOW OR FOLLOWING THE POSTING OF NOTICE OF ANY SUCH CHANGES, WILL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT, AND OF ANY SUCH CHANGES.

### 1. **Definitions.**

1.1. "**Host**" means Adobe's Customer, an individual or legal entity using the Service to host Adobe Captivate Prime, a learning management solution, and who has authorized you to use the Service.

1.2. "**Application**" means Adobe Captivate Prime, software application capable of use on compatible platforms and allows access and usage of Services.

2. **License to Use 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. Notwithstanding the foregoing, you may not use or access the Service unless approved by a Host. Adobe reserves the right to suspend or discontinue all or part of the Service at any time without prior notice.

3. **License to Use the Application.** Subject to the terms and conditions of this Agreement, Adobe grants to you a non-exclusive, non-transferable, revocable license to install and use the Application solely to use the Service.

### 4. **License Restrictions.**

4.1. **No Modifications, No Reverse Engineering.** You shall not modify, port, adapt or translate the Application. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Application.

4.2. **No Reselling Access or Use.** You shall not sell, resell, lend, lease, or rent access to or use of the Service, or the Application or any portion of the Service, or Application, or otherwise transfer any rights to use or access the Service, the Application (including without limitation, on a subscription, membership, pay-per-use, time share, computer service business, or service bureau basis). You shall not bundle or incorporate the Service, or the Application with or into any other service, offering, or solution for sale, resale, rent, or lease to third parties.

**4.3. Other Prohibited Uses.** You shall not host, on a subscription, membership, or pay-per-use basis or otherwise, the Service, the Application, including any related application, to permit a third party to use the Service to create any content.

**5. Ownership of the Services, Application and Marks.** You acknowledge that Adobe and its licensors own all right, title, and interest in: (a) the Service; and the Application; (b) any other Adobe software; and (c) all graphics, logos, service marks, and trade names, including third-party names, product names, and brand names related to the Service (the "Marks"). Notwithstanding the foregoing, the Host and its licensors own all right, title, and interest in any graphics, logos, service marks, and trade names used by the Host in connection with the Service.

## **6. Content.**

**6.1. Your Content.** "Content" means all data, text, images, and any other information or materials uploaded by you or by Host in connection with your use of the Service. 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. Such Content shall be stored on Adobe's servers at the request of the Host, as necessary for Adobe to provide the Service, and in accordance with Adobe's then-current storage policies.

## **6.2. User Conduct.**

**6.2.1. Responsible use.** The Adobe communities often consist of users who expect a certain degree of courtesy and professionalism. You must use the Services and Application responsibly.

**6.2.2. Misuse.** You must not misuse the Services or Application. For example, you must not:

- (a) enable or allow others to use the Services or Application using your account information;
- (b) use the Application to construct any kind of database;
- (c) access or attempt to access the Services or Application by any means other than the interface we provide or authorize;
- (d) circumvent any access or use restrictions put into place to prevent certain uses of the Services or Application;
- (e) share Content, or engage in behavior that violates anyone's intellectual property rights ("Intellectual Property Rights" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights);
- (f) upload or share any Content that is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
- (g) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;

- (h) attempt to disable, impair, or destroy the Services and Application;
- (i) upload, transmit, store, or make available any Content or code that contains any viruses, malicious code, malware, or any components designed to harm or limit the functionality of the Services or Application;
- (j) disrupt, interfere with, or inhibit any other user from using the Services or Application (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way);
- (k) engage in chain letters, junk mails, pyramid schemes, phishing, spamming, or other unsolicited messages;
- (l) place an advertisement of any products or services in the Services except with our prior written approval;
- (m) use any data mining or similar data gathering and extraction methods in connection with the Services;
- (n) disclose, harvest, or otherwise collect personally identifying information, including email addresses, or other private information about any third party without that party's express consent;
- (o) use the Service if you are under 13 years of age; or
- (p) violate applicable law (including, but not limited to, where applicable, COPPA).

6.2.3. **Exposure.** You acknowledge and agree that by accessing or using the Services, you may come across user generated content that you find offensive or upsetting. Your sole remedy is to stop viewing the content and reach out to the Host. If available, you may also click on the "Report" button to report user generated content to us.

7. **DMCA.** Adobe respect the Intellectual Property Rights of others and we expect our users to do the same. We will respond to clear notices of copyright infringement consistent with the Digital Millennium Copyright Act ("DMCA"). You can learn more about Adobe's IP Takedown policies and practices here: <http://www.adobe.com/in/legal/dmca.html>.

8. **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. **Your Warranty and Indemnification Obligations.**

9.1. **Warranty.** By uploading your Content to the Services or Application, you agree that you have: (a) all necessary licenses and permissions to use and Share your Content; and (b) the rights necessary to grant the licenses in the Agreement.

9.2. **Indemnification.** You will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damage, including reasonable attorneys' fees, arising out of or related to your Content, your use of the Services or Application, or your violation of the Agreement.

## 10. Investigations

10.1. **Screening.** We do not review all content uploaded to the Services or Application, but we may use available technologies, vendors, or processes to screen for certain types of illegal content (for example, child pornography) or other abusive content or behavior (for example, patterns of activity that indicate spam or phishing, or keywords that indicate adult content has been posted outside of the adult wall).

10.2. **Disclosure.** We may access or disclose information about you or your use of the Services or Application: (a) when it is required by law (such as when we receive a valid subpoena or search warrant); (b) to respond to your requests for customer service support; or (c) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public.

11. **Privacy.** Your Information. The privacy practices of the Host will apply to your Information that is collected and used by the Service. Please see the Host's privacy policy for more information regarding how the Host collects and uses your Information. Our collection and use of information in connection with Services is controlled by Adobe Privacy Policy available at <http://www.adobe.com/go/privacy> ("Privacy Policy"). Such Privacy Policy is incorporated herein by reference.

## 12. DISCLAIMER OF WARRANTIES.

12.1. **The Services and Application are provided "AS-IS" to the maximum extent permitted by law, we disclaim all warranties, express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. We make no commitments about the content within the Services. Adobe further disclaims any warranty that (a) the Services or Application will meet your requirements or will be constantly available, uninterrupted, timely, secure, or error-free; (b) the results obtained from the use of the Services or Application will be effective, accurate, or reliable; (c) the quality of the Services or Application will meet your expectations; or (d) any errors or defects in the Services or Application will be corrected.**

12.2. **We specifically disclaim all liability for any actions resulting from your use of any Services or Application. You may use and access the Services or Application at your own discretion and risk, and you are solely responsible for any damage to your computer system or loss of data that results from the use of and access to any Service or Application.**

12.3. **If you post your Content on our servers to publicly Share through the Services, Adobe is not responsible for: (a) any loss, corruption, or damage to your Content; (b) the deletion of Content by**

anyone other than Adobe; or (c) the inclusion of your Content by third parties on other websites or other media.

### 13. Limitation of Liability.

13.1. We are not liable to you or anyone else for any loss of use, data, goodwill, or profits, whatsoever, and any special, incidental, indirect, consequential, or punitive damages whatsoever, regardless of cause (even if we have been advised of the possibility of the loss or damages), including losses and damages (a) resulting from loss of use, data, or profits, whether or not foreseeable; (b) based on any theory of liability, including breach of contract or warranty, negligence or other tortious action; or (c) arising from any other claim arising out of or in connection with your use of or access to the Services or Application. Nothing in the Agreement limits or excludes our liability for gross negligence, for our, or our employees', intentional misconduct, or for death or personal injury.

13.2. Our total liability to you for actual damages for any cause whatsoever will be limited to one United States Dollar (\$1). 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 or an Application 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.

13.3. The Limitations on Liability in this section are intended to apply to the Disclaimer of Warranties 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 our liability to you in the event of death or personal injury resulting from Adobe's gross negligence.

### 14. Termination.

14.1. **Termination by You.** You may stop using the Services and Application at any time.

14.2. **Termination by Us.** We may, at any time, terminate your right to use and access the Services or Application if:

14.2.1. you breach any provision of the Agreement (or act in a manner that clearly shows you do not intend to, or are unable to, comply with the Agreement);

14.2.2. you materially breach any provision of the Agreement, and (i) the breach cannot be corrected; or (ii) we notify you of the breach and you fail to correct it within 14 days of the notice;

14.2.3. you physically, verbally, or through other means abuse, threaten, bully, or harass us or our personnel (in such circumstances, we may alternatively suspend or restrict your access to the Services or Application);

14.2.4. you have repeatedly made complaints in bad faith or without a reasonable basis, and continue to do so after we have asked you to stop (in such circumstances, we may alternatively suspend or restrict your access to the Services or Application);

14.2.5. we are required to do so by law (for example, where the provision of the Services or Application to you is, or becomes, unlawful);

14.2.6. we elect to discontinue the Services or Application, in whole or in part (such as if it becomes impractical for us to continue offering Services in your region due to change of law); or

14.2.7. our agreement with Host expires or gets terminated.

15. **Survival.** Sections 1, and 5-20 will survive any termination or suspension of this Agreement.

16. **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: If you reside in North America (inclusive of United States, Canada, and Mexico), your relationship is with Adobe Systems Incorporated, a United States company, and the Agreement are governed by the law of California, U.S.A. If you reside outside of North America, your relationship is with Adobe Systems Software Ireland Limited, and the Agreement are governed by the law of Ireland. For customers in Australia, Adobe Systems Software Ireland Limited is acting as an authorized agent of Adobe Systems Pty Ltd. and is entering into this contract in its capacity as agent for Adobe Systems Pty Ltd. You may have additional rights under the law. We do not seek to limit those rights where it is prohibited to do so by law.

17. **Australian Consumer Law.** Nothing in the Agreement is intended to exclude, restrict, or modify any consumer rights under the Competition and Consumer Act 2010 (Cth) (CCA) or any other legislation which may not be excluded, restricted, or modified by agreement. If the CCA or any other legislation implies a condition, warranty, or term into the Agreement or provides statutory guarantees in connection with the Agreement, in respect of goods or services supplied (if any), our liability for breach of such a condition, warranty, other term or guarantee is limited (at our election), to the extent it is able to do so: (a) in the case of supply of goods, us doing any one or more of the following: (i) replacing the goods or supplying equivalent goods; (ii) repairing the goods; (iii) paying the cost of replacing the goods or of acquiring equivalent goods; and (iv) paying the cost of having the goods repaired; or (b) in the case of supply of services, our doing either or both of the following: (i) supplying the services again; and (ii) paying the cost of having the services supplied again.

18. **Dispute Resolution.**

18.1. **Process** If you have any concern or dispute, you agree to first try to resolve the dispute informally by contacting us. If a dispute is not resolved within 30 days of submission, any resulting legal actions must be resolved through final and binding arbitration, except that you may assert claims in small claims court if your claims qualify.

18.2. **Rules.** If you reside in the Americas, JAMS will administer the arbitration in Santa Clara County, California pursuant to its Comprehensive Arbitration Rules and Procedures. If you reside in Australia, New

Zealand, Japan, mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan, South Korea, India, Sri Lanka, Bangladesh, Nepal, or a member state of the Association of Southeast Asian Nations (ASEAN), then the Singapore International Arbitration Centre (SIAC) will administer the arbitration in Singapore under its Rules of Arbitration, which rules are deemed to be incorporated by reference in this section. Otherwise, the London Court of International Arbitration (LCIA) will administer the arbitration in London under the LCIA Arbitration Rules. There will be one arbitrator that you and Adobe mutually select. The arbitration will be conducted in the English language, but any witness whose native language is not English may give testimony in the witness' native language, with simultaneous translation into English (at the expense of the party presenting the witness). Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over you and us.

**18.3. No Class Actions.** You may only resolve disputes with us on an individual basis, and you may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action.

**18.4. Injunctive Relief.** Notwithstanding the foregoing, in the event of your or others' unauthorized access to or use of the Services or Application in violation of the Agreement, you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

**19. Export Control Laws.** The Services or Application and your use of the Services and Application, are subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Services and Application. You agree to comply with all the laws, restrictions, and regulations.

**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. This Agreement, including the Privacy Policy, 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. Any questions or complaints regarding the Application shall be directed at following address Adobe Systems Incorporated, 345 Park Avenue, San Jose, California, 95110-2704, USA, Attention: General Counsel.