



EXHIBIT FOR HOSTED SERVICES AND MANAGED SERVICES (2017v1)

This Exhibit for On-demand Services and Managed Services, in addition to the General Terms, and any applicable PDM, applies to any eSyncTraining On-demand Services or Managed Services offerings licensed by Customer.

You agree that this Agreement (defined below) is like any written negotiated agreement signed by you. IF YOU WISH TO USE THE SERVICE IN YOUR CAPACITY AS AN EMPLOYEE, YOU MUST HAVE THE ABILITY TO BIND YOUR EMPLOYER. 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 eSyncTraining that supplements or supersedes all or portions of this agreement (a "Separate Agreement"). If you have entered into a Separate Agreement with eSyncTraining, this Agreement does not apply unless specifically referenced in and incorporated by such Separate Agreement.

1. Definitions

- "Add-On" means additional products and services sold or licensed to you from time to time pursuant to an Order Form.
- "Agreement" means these terms and conditions.
- "Appointee" means the authorized representative of your organization who administers various functions of the Service on your behalf.
- "Communications Services" means the communications services eSyncTraining provides you through use its products in conjunction with Adobe Connect, or similar software that include functionalities such as video and web conferencing, and mobile device integration.
- "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.
- "Event" means a customer web event.
- "General Services" means eSyncTraining Service offerings, including but not limited to Adobe Connect Single Sign On (SSO), LTI Learning Management System (LMS), Integrations, MP4 transcoding, and transcription services, EduGameCloud, etc.
- "License Metrics" means terms set forth in an Order Form describing the scope of your right to use the Service.
- "Meeting" means eSyncTraining Service offerings using Adobe Connect, or other meeting services, as applicable.
- "Meeting Attendees" means individuals who attend an online meeting or telephone conference enabled by the Service and hosted by you.
- "Order Form" means the cover sheet to this Agreement or any subsequent order form for additional products or services that has been accepted by eSyncTraining.
- "Participant" means a third party, including Meeting Attendees and Appointees, who interacts with the Service as a result of such party's relationship with or connection to you.
- "Personal Data" means personally identifiable information regarding a Participant.

- “Service” means individually and collectively, eSyncTraining Managed service, including the Communications Services and General Services.

2. License and Restrictions

1. License Grant from eSyncTraining

1. Subject to the terms of this Agreement, eSyncTraining grants Customer, during the License Term, a non-transferable, non-exclusive, and worldwide license to:
 1. Permit On-demand Users or Managed Services Users to access the On-demand Services or Managed Services, as applicable, through the applicable interfaces;
 2. Install, implement, and use the Distributed Code on Customer Sites, Customer’s Computers, or the On-demand Users’ or Managed Services Users’ Computers as applicable;
 3. Use and distribute Reports internally within Customer’s business; and
 4. For Managed Services, develop and test Customer Customizations (as that term is defined in the PDM for the applicable Managed Services) for the purpose of evaluating potential configurations of the Managed Services, and conduct quality testing of Customer Customizations, solely in connection with Customer’s use of the On-demand Services or Managed Services, as applicable, for its internal operations. Nothing in this Agreement grants Customer any express or implied license to use, distribute, modify, copy, link, or translate the Distributed Code, other than for Customer’s lawful use of the On-demand Services or Managed Services, as applicable.

2. License Restrictions

Except as permitted under this Agreement, Customer must not:

1. Copy, use, reproduce, distribute, republish, download, display, post or transmit the On-demand Services, Managed Services, Distributed Code, or Reports;
2. Sell, rent, lease, host, or sub-license the On-demand Services, Managed Services, Distributed Code, or Reports;
3. Make Customer’s login IDs or passwords available to any third party;
4. Use, modify, copy, link, translate, or reverse engineer the Distributed Code to enhance or enable the use of any third-party product or service;

5. Remove, obscure, or alter any proprietary notices associated with the On-demand Services, Managed Services, Distributed Code, or Reports;
6. Use the On-demand Services, Managed Services, Distributed Code, or Reports in violation of any applicable law (including use on websites that contain unlawful material such as material that violates any obscenity, defamation, harassment, privacy, or intellectual property laws); or
7. For Managed Services, attempt to interact with the operating system underlying the Managed Services

1. On-demand and Managed Services User IDs

1. Unless otherwise specifically limited in the Sales Order, On demand User and Managed Services User login IDs and passwords for the On-demand Services or Managed Services, as applicable, will be provided to Customer in an amount mutually agreed upon by Customer and eSyncTraining. Customer must take steps to prevent unauthorized access to its login IDs and passwords, and must not allow the use of the same login ID simultaneously by two or more On-demand Users or Managed Services Users.

2. License Grant from Customer

1. During the License Term, Customer grants eSyncTraining and its Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display Customer Data and Customer Content, solely to the extent necessary to provide the On-demand Services or Managed Services, as applicable, and Reports to Customer and enforce its rights under this Agreement.
2. Additionally, Customer grants eSyncTraining and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including combination with similar data of other customers of eSyncTraining or its Affiliates), publish, display, and distribute any anonymous information derived from Customer Data, such as, but not limited to, web browser, screen resolution, and mobile device-type information.
3. Access to Service. You acknowledge that your ability to access the Service may require the payment of third party fees (such as regulatory fees, telephone toll charges, ISP, or airtime charges) and that you are responsible for paying such fees. These fees may be in addition to any charges, fees, or other payments included in your License Metrics. eSyncTraining is not responsible for any equipment you may need to be able to access the Service.
4. Log-In Credentials. To gain access to and use the Service, you may be required to create a log-in ID and password (“Log-In Credentials”). You are responsible for all activity occurring under your Log-In Credentials, and you must keep your Log-In Credentials confidential and not share your Log-In Credentials with third parties. eSyncTraining has no obligation or responsibility with regard to your use, distribution, disclosure, or management of Log-In Credentials. Notwithstanding the foregoing, eSyncTraining may require you to change your Log-In Credentials if

eSyncTraining believes your Log-In Credentials are insecure or pose a risk to the Services.

5. Trial Use. In addition to the other terms of this Agreement, if you are a trial user of the Service, your right to access and use the Service is limited as provided in the e-mail communication from eSyncTraining 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 eSyncTraining at a later time with different features, for a fee, or not at all, as determined by eSyncTraining in its sole discretion. In order to maintain a consistent quality of service, eSyncTraining reserves the right to temporarily suspend trial access to the Service as needed.
6. Termination of Trial Service. Your right to use the Service on a trial basis shall terminate immediately upon expiration of the time period granted at the time you subscribed to the Service on a trial basis. In addition, eSyncTraining 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.
7. Use of the Service.
 - i. Communications Services Generally. As part of the Service, you may choose to use Communications Services, which may include telephone, video and web conferencing, and mobile device integration. Your ability to use these Communications Services is subject to this Agreement and the applicable License Metrics, as well as any applicable policies or terms that eSyncTraining may apply from time and any applicable software product license agreements, which can be found on the relevant software vendor websites.
 - ii. Availability and Compatibility of Required Third Party Equipment and Services. You may not be able to use the Service, if: (A) your equipment fails; (B) the power required to operate your computer, router or modem, if applicable, fails; (C) your computer experiences hardware or software problems or viruses; (D) your hardware or software is improperly installed; or (E) you are blocked or otherwise unable to access the eSyncTraining service, such as by certain fax machines or firewalls. By using the Service, you acknowledge that the Service may be limited in certain circumstances and may not always be available. eSyncTraining shall not be liable for any (I) errors in transmission, (II) failure to establish any connections or (iii) failure of, or your inability to use the Service.
 - iii. Service Distinctions. You acknowledge and agree that the Communications Services do not constitute or include traditional telephone services. Important distinctions exist between traditional telephone services and the Communications Services and the Communications Services may be subject to different regulatory treatment from traditional telephone services. This treatment may limit or otherwise affect your rights of redress before federal, state or local telecommunications regulatory authorities.
8. 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, eSyncTraining, its affiliates, suppliers, licensors,

and resellers specifically disclaim any express or implied warranty of fitness for such purposes.

3. Invoicing, Payment And Records

a. **Payment Terms.** All fees due under this Agreement are payable in U.S. dollars only. Payment terms for the Service and any Third Party Services will be set forth on each Order Form. If not set forth, all fees for products or services will be due thirty days from the date of eSyncTraining invoice. All fees are non-cancelable and non-refundable, except as expressly provided in this Agreement. You will reimburse eSyncTraining for all reasonable costs incurred (including attorneys' fees) in collecting past due amounts. You will be responsible for any taxes, duties or withholdings based on your order (excluding taxes based on eSyncTraining) that are timely invoiced.

b. **Audit.** You agree to keep all usual and proper records and books of account and all usual and proper entries relating to its use of the Service. eSyncTraining may cause an audit and/or inspection to be made of the applicable records and facilities in order to verify compliance with this Agreement. Any such audit shall be conducted by an auditor selected by eSyncTraining. Any audit and/or inspection shall be conducted during regular business hours at your facilities with advance notice of at least 10 days. You agree to provide eSyncTraining's designated audit or inspection team access to the relevant records and facilities and prompt and reasonable cooperation in the audit. You shall pay eSyncTraining the full amount of any underpayment revealed by the audit plus interest from the date such payments were due under the terms of this Section 10. Notwithstanding the foregoing, if such audit reveals an underpayment by more than five percent (5%) for the period covered by the audit report, you shall pay all of the fees and costs associated with such audit and the amount underpaid with interest from the date such payment was due pursuant to this Section 10. This provision does not limit any additional rights and remedies at law or in equity that eSyncTraining may have due to unauthorized use of the Service.

4. Ownership

1. You acknowledge that eSyncTraining and its licensors own all right, title, and interest in: (i) the Service; (ii) any eSyncTraining software provided in connection with the Service; and (iii) all graphics, logos, service marks, and trade names, including third-party names, product names, and brand names used by eSyncTraining in connection with the Service (the "Marks"). The terms "purchase" and "sale" in reference to the Service notwithstanding, it is expressly agreed by the parties that title to software provided through the Service does not pass to you and your rights with respect to such software will only be that of a licensee. You are welcome to send suggestions on improving the Service, and in doing so, you acknowledge and agree that such suggestions will become the property of eSyncTraining and eSyncTraining has no obligation to compensate you for such suggestions.

You or your respective licensors, as applicable, own all right, title, and interest in and to any graphics, logos, service marks, and trade names provided by you in connection with the Service.

Customer owns the Customer Data and Customer Content, subject to eSyncTraining's underlying intellectual property in the eSyncTraining Technology. eSyncTraining owns the eSyncTraining Technology.

5. EFFECT OF TERMINATION OR EXPIRATION

1. Upon termination or expiration of this Agreement or any License Term for On-demand Services or Managed Services:
 1. The license and associated rights for On-demand Services or Managed Services, as applicable, granted to Customer under this Agreement will immediately terminate;
 2. Customer must, at its expense: (1) remove and delete all copies of the Distributed Code; and (2) remove all references and links to the On-demand Services or Managed Services, as applicable, from the Customer Sites; and
 3. Customer Data and Customer Content stored within the On-demand Services will be available to Customer for 30 days after the termination or expiration in the same format then available within the reporting interface(s).
2. Any continued use of the Distributed Code, On-demand Services, or Managed Services after termination or expiration of this Agreement constitutes a breach of this Agreement, and Customer will be liable for any fees for any On-demand Services or Managed Services that remain active after the termination or expiration. These fees will be invoiced to Customer at the rate set out in the Sales Order.
3. With respect to Managed Services, notwithstanding anything set forth in the General Terms, if eSyncTraining determines, in its sole judgment, that Customer's deployment of the Managed Services contains a material risk to the security of eSyncTraining, any customer of eSyncTraining, or to the continued normal operation of other eSyncTraining customers, then eSyncTraining may at any time, upon written notice to Customer, immediately terminate or suspend Customer's access, in whole or in part, to the Managed Services, until such risk is resolved. eSyncTraining will use commercially reasonable efforts to mitigate any such security or operational risk prior to suspension or termination and only will look to such efforts as a final option to avoid such risks. Further, eSyncTraining may terminate or suspend Customer's access, in whole or in part, to the Managed Services, if eSyncTraining deems, in its sole judgment, that such termination or suspension is necessary to protect eSyncTraining, its suppliers, and its other customers from impact or liability under the security or operational risks discussed herein.

6. PRIVACY

1. **Privacy Policy.** For Customer Site(s) on which Customer Data is collected or Customer Content is served, Customer agrees that the Customer Site(s) will feature a privacy policy or other notice, displayed conspicuously from the primary interface, that:

1. Discloses Customer's privacy practices;
 2. Identifies the collection (via cookies, web beacons, and similar technologies, where applicable) and use of information gathered in connection with the On-demand Services or Managed Services, as applicable; and
 3. Offers individuals an opportunity to opt out of (or opt-in if applicable law requires) the collection or use of data gathered in connection with the On-demand Services or Managed Services, as applicable. eSyncTraining reserves the right to recommend to Customer that it modify its privacy disclosures to address updates or changes to applicable law, industry self-regulation, or best practices, and Customer agrees to undertake a good faith effort to address such recommendation(s).
2. **Sensitive Personal Data.** Customer must not use the On-demand Services or Managed Services to collect, process, or store any Sensitive Personal Data of its employees, customers, partners, site visitors, or any third party. Customer must not transmit, disclose, or make available Sensitive Personal Data to eSyncTraining or third-party providers.

7. CLAIMS

1. Customer will defend any third-party Claims brought against eSyncTraining, its Affiliates (and directors, employees, or agents of eSyncTraining or its Affiliates), and third-party providers in connection with:
 1. Customer's breach of any of its privacy or content monitoring obligations;
 2. Any violation of Customer's privacy policy, third party's rights of privacy, or privacy or data protection laws, guidelines, regulations, codes, or rules;
 3. Any Customer Data or Customer Content; or
 4. For Managed Services, any Customer Customizations.

Customer will indemnify eSyncTraining, its Affiliates (and directors, employees, or agents of eSyncTraining or its Affiliates), and third-party providers against their Losses directly attributable to the foregoing (A), (B), (C), or (D) in this section and are either awarded by a court of competent jurisdiction against eSyncTraining; assessed by a government agency or regulator; or agreed to in a written settlement agreement signed by Customer. The Limitation of Liability provision in the General Terms does not apply to Customer's liability or obligations under this section

2. Customer will have no liability for any Claim under section 6.1 of this Exhibit for On-demand Services and Managed Services if eSyncTraining fails to:
 1. Notify Customer in writing of the Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Customer is prejudiced by this failure;

2. Provide Customer with reasonable assistance requested by Customer for the defense or settlement (as applicable) of the Claim;
3. Provide Customer with the exclusive right to control and the authority to settle the Claim (eSyncTraining may participate in the matter at eSyncTraining's own expense); or
4. Refrain from making admissions about the Claim without Customer's prior written consent.

8. CONTENT MONITORING

Customer must implement a process through which infringing, abusive, or otherwise unlawful content can be reported to Customer and removed in accordance with applicable laws, regulations, rules, guidelines, codes, and industry best practices. If Customer Content is hosted by eSyncTraining, and Customer becomes aware of a possible violation regarding any Customer Content that is uploaded to the On-demand Services or Managed Services, as applicable, Customer must promptly notify eSyncTraining. Customer acknowledges that although the On-demand Services and Managed Services may be used to modify or edit Customer Content to be posted or integrated into Customer Sites on Customer's behalf, Customer: (A) retains complete control over each Customer Site, and all Customer Content; and (B) remains fully responsible for ensuring that all Customer Sites used with the On-demand Services or Managed Services, and all Customer Content: (1) comply with all applicable laws, regulations, rules, guidelines, and codes; and (2) do not infringe any person's or entity's rights. Customer acknowledges and agrees that nothing in this section prevents eSyncTraining from suspending services to comply with an applicable court order.

9. LIMITED WARRANTY; REMEDIES

1. **Warranty.** eSyncTraining warrants that the On-demand Services or Managed Services, as applicable, as delivered to Customer will substantially conform to the applicable Documentation during the License Term, to the extent the On-demand Services or Managed Services constitute Indemnified Technology. Customer must notify eSyncTraining of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appeared.
2. **Sole and Exclusive Remedies.** To the extent permitted by law, Customer's sole and exclusive remedy and eSyncTraining's sole liability arising out of or in connection with a breach of the warranty in section 8.1 (Warranty) of this Exhibit is limited to:
 1. A replacement of the Distributed Code (as applicable); or
 2. If replacement is not commercially reasonable, a termination of the applicable On-demand Service or Managed Service and a refund of any pre-paid unused fees for the applicable On-demand Service or Managed Service.

10. Acceptable Use Policy

- a. You represent and warrant that you are the owner, licensor, or authorized user of all Content or that you have the right to upload Content to the Service. You represent and warrant that:
- b. You agree that 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 eSyncTraining, 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, 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, Personal Data, 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).
- c. You further agree not to:
 - i. 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;
 - ii. use the Service in any manner that could damage, disable, overburden, or impair any eSyncTraining server, or the network(s) connected to any eSyncTraining server or interfere with any other party's use and enjoyment of the Service;
 - iii. attempt to gain unauthorized access to service, materials, other accounts, computer systems or networks connected to any eSyncTraining server or to the Service, through hacking, password mining, or any other means;
 - iv. obtain or attempt to obtain any materials or information through any means not intentionally made available through the Service;
 - v. host, on a subscription basis or otherwise, the Service, including any related application, (A) to permit a third party to use the Service to create, transmit, or protect any content, or (B) to conduct conferences, online meeting services, or training sessions for a third party;
 - vi. engage in any systematic extraction of data or data fields, including without limitation e-mail addresses;
 - vii. disclose, harvest, or otherwise collect Personal Data, including e-mail addresses, or other private information about any third party without that party's express consent;

- viii. transmit junk mail, spam, surveys, contests, pyramid schemes, chain letters, or other unsolicited e-mail or duplicative messages;
 - ix. sell, lease, or rent access to or use of the Service, or otherwise transfer any rights to use the Service under this Agreement (including without limitation, on a timeshare or service bureau basis);
 - x. defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others; or
 - xi. 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.
- d. Misuse of Service. You agree to notify eSyncTraining immediately if you become aware at any time during the Term that the Service is being misused or used by an unauthorized user.
- e. Investigations. eSyncTraining does not generally monitor user activity occurring in connection with the Service. If eSyncTraining becomes aware, however, of any possible violations by you of this Section or any other provision of this Agreement, eSyncTraining reserves the right to investigate such violations, and eSyncTraining may, at its sole discretion, suspend or terminate your access to the Service or change, alter or remove Content, in whole or in part. If, as a result of such investigation, eSyncTraining believes that criminal activity has occurred, eSyncTraining reserves the right to refer the matter to, and to cooperate with, any and all applicable law enforcement authorities. eSyncTraining is entitled, except to the extent prohibited by applicable law, to disclose any information, including Personal Data, about you in eSyncTraining's possession in connection with your use of the Service to law enforcement or other government officials, as eSyncTraining in its sole discretion believes to be necessary or appropriate.

11. Data Retention & Content

- a. With respect to On-demand Services, Customer Data may be permanently deleted from eSyncTraining's servers 25 months from the date of its collection or receipt.
- b. You may upload Content to the Service in connection with your use of the Service. eSyncTraining 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 eSyncTraining's servers at your request, as necessary for eSyncTraining to provide the Service and in accordance with eSyncTraining's then-current storage policies. You are solely responsible for Content including making and keeping backup copies of Content. eSyncTraining 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, eSyncTraining 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 restricts access to your Content. You are solely responsible for applying the appropriate level of access to your Content.

12. Confidentiality and Personal Data

- a. **Participant Personal Data.** As between eSyncTraining and you, you are the Data Controller and eSyncTraining is the Data Processor of all Personal Data of Participants submitted through the Service. You shall have sole responsibility for any and all Personal Data of Participants used and submitted in connection with the Service, and eSyncTraining shall have no responsibility in connection thereto. You shall comply with all data protection and privacy laws and rules applicable to Personal Data of Participants. You shall defend, indemnify, and hold harmless eSyncTraining from any claim, suit or proceeding brought against eSyncTraining by any third party (including Participants) in connection with any acts or omissions with regards to Content or Personal Data submitted to the Service.
- b. **Confidentiality.** “Confidential Information” means (i) any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including, without limitation, algorithms, business plans, customer data, customer lists, customer names, designs documents, drawings, engineering information, financial analysis, forecasts, formulas, hardware configuration information, know-how, ideas, inventions, market information, marketing plans, processes, products, product plans, research, specifications, software, source code, trade secrets or any other information which is designated as “confidential,” “proprietary” or some similar designation and (ii) any information otherwise obtained, directly or indirectly, by a receiving party through inspection, review or analysis of the materials described in clause (i). Information disclosed orally shall be considered Confidential Information only if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information of a third party that is in the possession of one of the parties and is disclosed to the other party under this Agreement. Confidential Information includes, without limitation, the Service, related documentation, specifications, pricing, disclosures in connection with the Service and the terms and conditions of this Agreement. Confidential Information shall remain the sole property of the disclosing party or its licensors.
- c. **Nondisclosure.** The parties agree, both during the term of this Agreement and for a period of five (5) years (or, as applicable, with respect to Confidential Information that is a trade secret, for an indefinite period) after its termination, to hold each other’s Confidential Information in confidence and not to disclose such information in any form to any third party without the express written consent of the disclosing party, except to employees and consultants performing services for the benefit of the receiving party who are under a written non-disclosure agreement protecting the applicable Confidential Information in a manner no less restrictive than this Agreement.

Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of this Agreement. A receiving party facing legal action to disclose Confidential Information of the disclosing party shall promptly notify and provide the disclosing party the opportunity to oppose such disclosure or obtain a protective order and shall continue to treat such information as Confidential Information. This Section 8(c) shall not be construed as granting or conferring any rights to either party by license or otherwise, expressly or implicitly, to any Confidential Information.

- d. Exceptions to Confidentiality. Information will not be considered as Confidential Information if the receiving party can establish by documentary evidence that the information is or was: (i) lawfully available to the public through no act or omission of the receiving party; (ii) in the receiving party's lawful possession prior to disclosure by the disclosing party and not obtained either directly or indirectly from the disclosing party; (iii) lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) independently developed by the receiving party.

13. Term and Termination.

- a. Term. This Agreement will continue until terminated in accordance with the provisions below. Individual orders will continue for the periods specified in the applicable Order Form(s) and renewal provisions. If an Order Form does not provide an initial term or renewal provisions, each order will be for a one-year period and will renew automatically for additional one-year periods unless either party notifies the other in writing at least thirty (30) days prior to expiration of the then-current term of its intent not to renew.
- b. Termination.
 - i. By eSyncTraining. eSyncTraining may at any time and upon written notice to you terminate this Agreement and your access to the Service, or suspend or restrict your access to the Service in whole or in part, if: you breach this Agreement and do not cure such breach within thirty business days of receiving written notice of the breach from eSyncTraining; or immediately if eSyncTraining determines in its sole and exclusive judgment that terminating your access to the Service is advisable for security reasons, to protect eSyncTraining from liability, or for the continued normal and efficient operation of the Service.
- c. Effect of Termination. Upon termination of this Agreement, you must immediately cease using the Service. eSyncTraining reserves the right to delete any data files associated with Content, Personal Data, or your use of the Service upon termination of the Service. The following Sections of this Agreement shall survive termination of this Agreement: 1, 3, 10(c), 7, 8, 11, 12 and 13.

14. Disclaimer of Warranties

- a. THE SERVICE IS 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, ESYNCTRaining, ITS AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, RESELLERS, LICENSORS, AND ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICE, THIRD PARTY SERVICES AND ADD-ONS 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, ESYNCTRaining DOES NOT WARRANT OR REPRESENT THAT THE SERVICE WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT ESYNCTRaining'S SERVERS AND SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ESYNCTRaining'S SECURITY PROCEDURES AND MECHANISMS WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO INFORMATION OR CONTENT BY THIRD PARTIES.

15. Limitation of Liability

- a. NEITHER ESYNCTRaining NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE, ANY THIRD PARTY SERVICE OR ADD-ON (INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, BUSINESS INTERRUPTION, OR THE LIKE), AND BASED ON ANY THEORY OF LIABILITY INCLUDING STATUTE, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ESYNCTRaining 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.
- b. ESYNCTRaining'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF \$100 AND 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. ESYNCTRaining'S SUPPLIERS SHALL HAVE NO LIABILITY TO YOU FOR ANY REASON.

16. Miscellaneous

- a. Export Control Laws. The export and re-export of certain software and Content are controlled by the United States Export Administration Regulations, and such software and Content may not be exported or re-exported to Cuba, Iran, Libya, North Korea, Sudan, Syria, or any country to which the United States embargoes goods. In addition, certain software and Content 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, Libya, 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.
- b. Open Source Notice. eSyncTraining may distribute third party open source software programs with the Software either incorporated into the Software or provided separately. These third party programs are subject to their own additional license terms, none of which require notice, attribution, payment, disclosure or license back of any Customer information. A list of open source software programs delivered with the Software can be found in the readme.txt file in the Documentation.
 - c. Third Party Software Licenses. These Terms of Service are different from the software product license agreements, which can be found on software vendor websites, including the Adobe Connect EULA found here.
 - d. 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.
 - e. Construction. This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.
 - f. Integration; Amendment; Enforcement of Rights. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.
 - g. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.
 - h. Headings. Headings contained in this Agreement are for convenience of reference only and do not form part of this Agreement. A word importing the singular includes the plural and vice versa. Gendered pronouns are used for convenience and are intended to refer the masculine or feminine, as applicable.
 - i. Assignment. This Agreement is personal to the Customer originally licensed and may not be assigned, whether by operation of law or otherwise, except that either party may assign this Agreement or any Software license to its successor in the event of a merger, acquisition or sale of all or substantially all of the assets of such party or an applicable business unit. Any other purported assignment shall be void.
 - j. Notices. Every notice or other communication required or contemplated by this Agreement by either party shall be delivered to the other party at the address on the cover page or Order Form by: (i) personal delivery; (ii) postage prepaid, return receipt requested, registered or certified mail; (iii)

internationally recognized express courier, such as Federal Express, UPS or DHL; or (iv) facsimile or email with a confirmation copy sent simultaneously by postal mail. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given. A party may change its address by providing notice to the other party in accordance with this paragraph.

k. **Governing Law.** This Agreement shall be governed by and construed in accordance with laws of the State of California notwithstanding any choice-of-law principle that might dictate a different jurisdiction's governing law. Any legal action or proceeding with respect to this Agreement shall be brought in the federal or state courts in San Francisco County, California, and, by execution and delivery of this Agreement, the parties accept for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.

l. **Attorney Fees.** In the event of any action, suit or proceeding related to this Agreement, the prevailing party, in addition to its rights and remedies otherwise available, shall be entitled to receive reimbursement of reasonable attorney's fees and expenses and court costs.

m. **Counterparts.** This Agreement may be executed by written or electronic signature and delivered in multiple counterparts, including facsimile, PDF, or other electronic counterparts, all of which will constitute one and the same instrument and agreement.