

liveSTORYBOARD Content Management System (CMS) End User License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE LIVESTORYBOARD CONTENT MANAGEMENT SYSTEM (CMS). BY USING THE LIVESTORYBOARD CONTENT MANAGEMENT SYSTEM (CMS), YOU SIGNIFY THAT YOU AGREE WITH THESE TERMS AND CONDITIONS OF USE. IF YOU DO NOT AGREE WITH THE TERMS, PLEASE DISCONTINUE USE.

Welcome to the End User License Agreement for the liveSTORYBOARD Content Management System (CMS) and its related documentation (collectively, the "Software"). This Agreement as it may be amended from time to time (the "Agreement"), is between you (referred to herein as "you" or the "End User") and liveSTORYBOARD, Inc. (referred to herein as "we" or "us" or "liveSTORYBOARD") and describes the terms and conditions of your use of the Software. If you are using the Software in any capacity as a Representative (as defined below) of an Entity (as defined below), then this Agreement is by and among you, the Entity and liveSTORYBOARD. We may amend this Agreement by making the amended version available to you on the liveSTORYBOARD website (www.liveSTORYBOARD.com) the next time you log on. You agree that your continued use of the Software after such amendment shall signify your acceptance of any such amendment. Otherwise, this Agreement may not be amended except in a writing signed by us.

If you are using the Software in any capacity as an employee, contractor, representative or agent (collectively, a "Representative") of another person, corporation, partnership or other business entity (an "Entity"), then your assent to this Agreement shall constitute both (i) your assent to the terms and conditions of this Agreement, individually, and (ii) such Entity's assent or affirmation of assent to this Agreement. If you are using the Software in any capacity as a Representative of an Entity, then unless otherwise stated, references to "you" shall be deemed to be references to both you and such Entity. By using or continuing to use the Software as a Representative, you are representing and warranting to liveSTORYBOARD that either (A) you are authorized on behalf of the Entity to bind the Entity to this Agreement, or (B) another individual who is authorized on behalf of the Entity to bind the Entity to this Agreement has previously agreed to the terms and conditions of this Agreement on behalf of the Entity. If you have any questions about your use of the Software as a Representative, please contact us at info@liveSTORYBOARD.com.

Any inquiries relating to our website, the Software or this Agreement should be directed to info@liveSTORYBOARD.com.

1. Definitions.

1.1 "End User Content" means the text, pictures, graphics, sound, video or other data provided by End User to liveSTORYBOARD (or its servers) for use with the Software pursuant to this Agreement, and any trademarks associated with such Customer Content.

1.2 "Software" includes all computer software programs used to operate the liveSTORYBOARD Content Management System (CMS), including any subsequent versions thereof made available to End User, if any, and all accompanying documentation.

2. Access to the Software.

2.1 Access. During the term of this Agreement, we may make the Software available to you at the Internet Uniform Resource Locator (URL) (i.e. "domain name") www.livestoryboard.com, or such successor URL as we designate. You shall be responsible, at your own expense, for all hardware, client software and Internet connections required to access our servers at such URL.

2.2 License Grant; Ownership. We hereby grant to you, or the Entity if you are using the Software as a Representative, a non-exclusive, non-transferable license (without the right to sublicense) to use the Software solely for the purposes for which such Software was designed as expressly contemplated by the documentation provided by us. We shall retain all rights, title and interest in and to the Software and all intellectual property rights associated therewith. All rights not expressly granted by us are expressly reserved.

2.3 Customer Content. In connection with your use of the Software, you may deliver End User Content to us from time to time in the formats requested by us. You hereby grant to us a worldwide, non-exclusive, royalty-free license to use, reproduce, distribute, create derivative works of, publicly perform, publicly display and digitally perform the End User Content solely for the purpose of providing the Software and its functionality to you.

2.4 Payment of Fees. You, or the Entity if you are using the Software as a Representative, agree to pay all fees for use of the Software (the "Fees") that are specified by liveSTORYBOARD. Fees are non-refundable and are not subject to any right of setoff or counterclaim. Payments are due net thirty (30) days from date of invoice. In addition to any other remedies available to liveSTORYBOARD, including but not limited to termination of this Agreement, invoices that are not paid in full when due ("Payment Default") will be subject to interest charges of the lesser of 1.5% per month or the highest amount permitted by law, which interest shall accrue daily. You, or the Entity if you are using the Software as a Representative, also shall reimburse liveSTORYBOARD for all expenses incurred in collection of any Payment Default, including but not limited to attorneys' fees and collection agency fees. You, or the Entity if you are using the Software as a Representative, shall be liable for, and shall reimburse, indemnify and hold liveSTORYBOARD harmless from, all local, state, federal and non-United States taxes or similar assessments or charges (including any interest and penalties imposed thereon), other than taxes based on the net income of liveSTORYBOARD, arising out of or relating to this Agreement or your use of the Software.

2.5 Cookies and Other Tracking Methods. When you use the Software, we might store some information on your computer. Our servers automatically collect information about which pages you visit, your browser type, your IP address, your most-recently visited URL, your preferences and certain other information. This information will be in the form of a "cookie" or similar file. Cookies are small pieces of information stored on your computer hard drive, not on our servers. Cookies help you navigate a web site as easily as possible. Cookies can help Us provide information about how the Software performs and to improve functionality. You are always free to decline our cookies if your browser permits, but some parts of the Software may not work properly in that case. In some cases, We track or collect information about your use of the Software by the numeric address assigned to the computer you are using (your IP address) or by the URL's that you come from or leave to. These methods allow Us to resolve server problems or administer the Software. We may also automatically collect and store statistics and other information about you and your use of the Software both on an aggregate, non-personally identifiable basis and in a manner that may allow Us to associate such information with other information about you.

2.6 Security. We use industry-standard methods to protect your End User Content from unauthorized access. Among other techniques, We store such information on a computer in a secure location, and We restrict the number of employees internally who can access such data. We are not responsible if some other third party gains access to your End User Content by evading our security measures or otherwise obtains access to your End User Content. There is no such thing as "absolute security" on the Internet.

2.7 No Consulting Services. You shall not be entitled to any consulting services, training services or support services under this Agreement, although you may access the FAQs, help and tutorials for the Software which are made available on liveSTORYBOARD's website from time to time. For additional fees and subject to the terms and conditions of a separate agreement, liveSTORYBOARD may provide consulting services, training services, support services (including telephone technical support and priority response email technical support) or custom integration, design and development services (collectively, "Consulting Services") for the Software. Please check the Support section on our website (www.liveSTORYBOARD.com/Support) or contact us at info@liveSTORYBOARD.com or (415) 615-9079.

3. Restrictions.

3.1 Access Restrictions. Each user identification and password is assigned to and to be used solely by one specific individual, and no user identification or password may be used by more than one specific individual. You shall not permit any anyone other than you to access the Software using your user identification or password without our express prior written consent.

3.2 Volume Limitations. You acknowledge that we may limit the amount of storage space on our servers for End User Content. In the event that you exceed such limits, we may restrict your access to or the functionality of the Software. We will provide you with reasonable advance notice to remedy such excess; provided, however, that if we determine that such excess is an immediate threat to our operations, then we may take any steps necessary to reduce such threat without prior notice.

3.3 Usage Restrictions. You shall not (and shall not permit any third party to) copy, modify or reverse engineer any part of the Software and shall not use the Software to develop any derivative works or any functionally compatible or competitive software. You shall not remove any proprietary markings within the Software. You shall not use the Software in any manner which violates any law or regulation, is for fraudulent purposes, contravenes public policy, may cause liveSTORYBOARD or its licensors to be subject to investigation, prosecution or legal action or in contravention of the written instructions provided by liveSTORYBOARD.

3.4 End User Content Restrictions. liveSTORYBOARD acts as a passive conduit for the online storage, distribution and publication of End User Content, and shall bear no liability whatsoever for End User Content. However, we may take any action we deem reasonable or appropriate with respect to any End User Content that we believe may create liability for liveSTORYBOARD or any third party. You shall not provide any End User Content that infringes on any intellectual property or other right, violates any law or contains any virus.

4. Warranties.

4.1 Warranty. We warrant to you that access to the Software in accordance with its related documentation and this Agreement shall be available to you no less than 99.5% of the time during any calendar month, excluding (i) emergency or scheduled maintenance, (ii) any cause or causes beyond our reasonable control (e.g., force majeure events described in Section 11.4), (iii) the nonperformance of any hardware, software (e.g. misconfiguration of a user's network environment or browser), ISP connection or other equipment that is not provided by liveSTORYBOARD, or (iv) Internet performance or connectivity issues outside the reasonable control of liveSTORYBOARD. We shall use commercially reasonable efforts to provide you with at least seventy-two hours notice of any scheduled maintenance outages.

4.2 Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTION 4.1, LIVESTORYBOARD DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, CONFORMANCE WITH DESCRIPTION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Except as set forth in Section 4.1, liveSTORYBOARD does not guarantee continuous, uninterrupted or secure use of the Software, and liveSTORYBOARD shall not be liable if you are unable to access the Software or any End User Content. You acknowledge that you have not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein.

4.3 Remedy. Upon a breach of the warranty contained in Section 4.1, you shall have the right to terminate this Agreement, exercisable only during the thirty (30) day period following such breach, upon written notice to us. This Section 4.3 sets forth your sole and exclusive remedy, and liveSTORYBOARD's sole and exclusive obligation and liability, with respect to any breach of, or failure to comply with, the warranty contained in Section 4.1.

5. Updates and Upgrades.

5.1 Updates. We reserve the right to update the Software from time to time in our sole and absolute discretion to, among other things, implement bug fixes and functionality changes such as newly developed features (each, an "Update"). During the term of this Agreement, you shall receive access to all Updates without additional charge, and all such Updates shall be deemed to be Software under this Agreement. We reserve the right to render the Software and any End User Content inaccessible from time to time to perform routine or emergency maintenance or implement Updates. We will use commercially reasonable efforts to provide you with advance notice of any such inaccessibility, but we reserve the right to render the Software and any End User Content inaccessible without notice.

5.2 Upgrades, Derivative Versions and New Products. We may, from time to time, develop (i) new versions of the Software which, among other things, implement material functionality changes (each, an "Upgrade"), (ii) a version of the Software which is implemented in a different programming language or operates on a different software or hardware platform (a "Derivative Version"), or (iii) products or services with materially different functionality ("New Products"). You shall have no rights to any Upgrade, Derivative Version or New Product under this Agreement. We may, however, from time to time during the term of this Agreement and in our sole discretion, make available to you certain Upgrades, Derivative Versions or New Products under the terms of this Agreement subject to your, or the Entity's if you are using the Software as a Representative, assent to (A) any supplemental or amended terms and conditions that we require, and (B) any additional Fees that we require.

5.3 Migration. You understand and agree that certain Updates, Upgrades, Derivative Versions or New Products may require migration services in order to access your End User Content using such Updates, Upgrades, Derivative Versions or New Products. We may, in our sole discretion, require additional Fees to perform these migration services. We also may, in our sole discretion, give you the choice of either (A) paying such additional Fees for such migration services, or (B) continuing to use the Software without such Updates, Upgrades, Derivative Versions or New Products.

6. Term and Termination.

6.1 Term. The term of this Agreement shall commence upon your first use of the Software and shall continue until terminated by either party as provided herein.

6.2 Termination. Either party may terminate this Agreement with thirty (30) days prior written notice. In addition, liveSTORYBOARD may terminate this Agreement at any time (i) upon a material breach hereof by you (or the Entity or any other Representative of such Entity if you are using the Software as a Representative), which breach is not cured within ten (10) business days of notice of such breach; (ii) upon either party ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) calendar days or making a general assignment for the benefit of its creditors; or

(iii) if either party or any of its suppliers becomes the subject of an investigation by a law enforcement agency or threatened with prosecution as a result of your use of the Software.

6.3 Effect of Termination. Upon termination, you shall immediately return or destroy any and all copies of the Software or related documentation in your possession or under your control and certify to liveSTORYBOARD that you have done so. liveSTORYBOARD's sole and exclusive obligation following termination shall be to promptly remove all End User Content from liveSTORYBOARD's servers. In addition, Sections 1, 3, 4.2, 4.3, and 5 through 11, and the obligation to pay any accrued but unpaid Fees shall survive termination.

7. Limitation of Liability. TO THE EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF. LIVESTORYBOARD'S AGGREGATE MAXIMUM LIABILITY TO END USER (OR THE ENTITY IF END USER USES THE SOFTWARE AS A REPRESENTATIVE) IS LIMITED TO THE FEES PAID BY END USER TO LIVESTORYBOARD UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY. YOU ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION 7 ARE A FUNDAMENTAL PART OF THE BASIS OF LIVESTORYBOARD'S BARGAIN HEREUNDER, AND LIVESTORYBOARD WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.

8. Indemnification. You, or the Entity if you are using the Software as a Representative, shall indemnify liveSTORYBOARD and its officers, directors, shareholders and employees (each a "liveSTORYBOARD Indemnified Party") against any and all harm, claims, losses, costs and expenses, including attorneys' fees, which a liveSTORYBOARD Indemnified Party may incur as a result of claims in any form by third parties arising from or relating to (a) any End User Content (including any content on any web site to which any End User Content is hyperlinked), (b) your use of the Software, (c) your acts, omissions or representations, and (d) any content contained on your web sites.

9. Confidentiality. All information with respect to the Software, all End User Content and all other non-public information (whether technical or otherwise) made available or disclosed by either party (the "Disclosing Party") to the other party (the "Recipient") shall be deemed "Confidential Information" hereunder. The Recipient shall not, without the prior written consent of the Disclosing Party, disclose to any third party or use any Confidential Information for any purpose other than the provision or use of the Software hereunder. Upon termination of this Agreement, each party shall either return to the other party all documentation containing Confidential Information or certify to the other party the destruction thereof. Confidential Information shall not include (i) any information that is known by the Recipient or the general public at the time of disclosure or thereafter becomes known to the general public through no fault of the Recipient, (ii) is independently developed by the Recipient, (iii) is disclosed to the Recipient by a third party without any breach of confidentiality obligation to the Disclosing Party, or (iv) is approved for disclosure by the prior written consent of the Disclosing Party.

10. Press Releases; Use of Name. You hereby grant liveSTORYBOARD the right to include your name and (if applicable) logo on any list of customers contained in any of liveSTORYBOARD's marketing collateral, presentations, web sites or press releases or announcements.

11. General Provisions.

11.1 Governing Law. This Agreement shall be governed in all respects by the internal laws of the State of California without regard to conflicts or choice of law provisions thereof. The parties agree (i) that all disputes and controversies regarding this Agreement or the Services shall be resolved in the state and federal courts located in San Francisco County in the State of California, (ii) to submit to the exclusive jurisdiction of, and agree that venue shall exclusively in, such courts, and (iii) to exclude the application of the 1980 United Nations Convention on the International Sale of Goods (if applicable) to this Agreement.

11.2 Severability; Headings. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

11.3 Export Control. You will comply with all applicable export and import control laws and regulations applicable to use of the Software. You, or the Entity if you are using the Software as a Representative, hereby agree to defend, indemnify and hold harmless liveSTORYBOARD from and against all breaches of this Section.

11.4 Force Majeure. Except for the payment of monies due hereunder, neither party shall be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, war, Internet or other network "brownouts" or failures, telecommunications provider failures, power failures, hacker attacks, computer viruses, and acts of civil and military authorities. Each party acknowledges that the operation of liveSTORYBOARD's servers and the provision of the Software may be interfered with by numerous factors outside of liveSTORYBOARD's control.

11.5 Notice. Any notices hereunder shall be given to the appropriate party at the address specified above or at such other address as the party shall specify in writing. Notice shall be deemed given upon personal delivery; if sent by a national overnight express service; if sent by fax, upon confirmation of receipt; or if sent by certified mail, postage prepaid, three (3) days after the date of mailing.

11.6 Assignment. Neither you, nor the Entity if you are using the Software as a Representative, may assign your or its rights or delegate your or its duties under this Agreement without the prior written approval of liveSTORYBOARD. Any attempted assignment in violation of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement is binding on the parties and their successors and assigns. We may subcontract all or a portion of our duties hereunder.

11.7 Waiver. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

11.8 Entire Agreement. This Agreement constitutes the entire agreement between you and liveSTORYBOARD (or you, the Entity and liveSTORYBOARD if you are using the Software as a Representative) with respect to the subject matter hereof and neither party shall be liable to the other in any manner for any representations, warranties or covenants except as specifically set forth herein.