

**AJAR PRODUCTIONS**  
**End User License Agreement**  
**October 2010**

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NOTE THAT YOU MAY HAVE ANOTHER WRITTEN AGREEMENT DIRECTLY WITH AJAR PRODUCTIONS (E.G., A VOLUME LICENSE AGREEMENT) THAT SUPPLEMENTS OR SUPERSEDES ALL OR PORTIONS OF THIS AGREEMENT. AJAR PRODUCTIONS OWNS ALL INTELLECTUAL PROPERTY IN THE SOFTWARE. THE SOFTWARE IS LICENSED, NOT SOLD. AJAR PRODUCTIONS PERMITS YOU TO COPY, DOWNLOAD, INSTALL, USE, OR OTHERWISE BENEFIT FROM THE FUNCTIONALITY OR INTELLECTUAL PROPERTY OF THE SOFTWARE ONLY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

**1. Definitions.**

“Commencement Date” means the date upon which Ajar Productions processes Your payment of the License or Maintenance Fees.

“Computer” means a single physical electronic device with one or more central processing units that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

“Parent Software” means the application in which a Plug-in Product is used.

“Plug-in Product” means a version of the Software that serves as an extension, add-on, or plug-in to another application (e.g., Ajar Productions SmartMouth™ extension for Adobe® Flash® Professional software).

“Software” means (A) all of the computer programs and other information with which this Agreement is provided, including but not limited to: (i) all software files and other computer information; (ii) sample and stock photographs, images, sounds, clip art and other artistic works bundled with Ajar Productions software and not obtained from Ajar Productions through a separate service (unless otherwise noted within that service) or from another party through a separate service (“Content Files”); and (iii) related explanatory written materials and files (“User Documentation” or “Documentation”); and (B) any and all modified versions and copies of, upgrades, updates, and additions to such computer programs and other information, provided to You by Ajar Productions at any time, to the extent not provided under separate terms.

“You” and “Your” means you individually if you acquire the Software for yourself, or the company or other legal entity for which you acquire the Software (but not the affiliates, subsidiaries, or other related legal entities of such company or legal entity).

**2. Software License.**

If You lawfully obtained the Software and any required serial number(s) from Ajar Productions, and as long as You comply with the terms of this Agreement, Ajar Productions grants You a non-exclusive, nontransferable, nonsublicensable license to install and use machine-readable object code copies of the Software in a manner consistent with its design and User Documentation and as further set forth below.

2.1 License Fee. You shall pay fees to Ajar Productions, as designated by the Software or as otherwise designated by Ajar Productions, in consideration for the authorized use of the Software pursuant to this Agreement. Except as otherwise expressly provided in this Agreement, the license fee is non-refundable and payable upon acceptance of the terms and conditions set out herein.

2.2 Limited Use. If the Software is designated as “Freeware,” installation will be permitted without entering a serial number and is subject to a trial period as determined by Ajar Productions. YOU MAY NOT USE SUCH NON-SERIALIZED SOFTWARE AFTER ANY APPLICABLE TIME-OUT PERIOD HAS ENDED, OR ATTEMPT TO ACCESS SERIAL-ONLY FEATURES UNLESS YOU INPUT A VALID SERIAL NUMBER (see Section 2.3). WITHOUT LIMITING SECTIONS 6 AND 7 BELOW, ACCESS TO AND USE OF ANY OUTPUT FILES CREATED WITH SUCH NON-SERIALIZED SOFTWARE IS ENTIRELY AT YOUR OWN RISK.

2.3 General Use. You may install and use the Software for internal use only on the number of Computers documented in Ajar Productions’ records with the serial number issued by Ajar Productions.

2.4 Dual-Boot Platform Use. The Software is licensed for use on a specific operating system platform. You must purchase a separate license for use of the Software on each operating system platform. By way of example, if You desire to install the Software on both the Mac OS and Windows operating system platforms on a device that runs both of those platforms (i.e., a dual-boot machine), then You must first obtain two separate licenses for the Software. This is true even if two versions of the Software, each designed for a different operating system platform, are delivered to You on the same media.

2.5 Use Within Parent Software Versions. If the Software is a Plug-in Product, it is licensed for use on a single installation of the Parent Software. For example, if You desire to install the Software on Adobe® Flash® Professional CS4 and Adobe® Flash® Professional CS5, then You must first obtain two separate licenses for the Software.

2.6 Unauthorized Use or Distribution. You may not, whether through deliberate or negligent act or act of omission, distribute or cause the distribution of the Software to any third party.

2.7 Backup Copy. You may make one backup copy of the Software, provided Your backup copy is installed and used solely for archival purposes.

2.8 Documentation. You may make copies of the Documentation for Your own internal use in connection with use of the Software in accordance with this Agreement but no more than the amount reasonably necessary. Any permitted copy of the Documentation that You make must contain the same copyright and other proprietary notices that appear on or in the Documentation as originally provided to You by Ajar Productions.

### **3. Intellectual Property Ownership.**

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### **4. Restrictions and Requirements.**

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4.2 Use Obligations. You agree that You will use the Software solely as permitted by this Agreement and that You will not use the Software in a manner inconsistent with its design or Documentation. You must at all times: (a) ensure that only You may use the Software in accordance with the terms and conditions of this Agreement; and (b) promptly advise Ajar Productions, including in writing, if You become aware of any unauthorized use or distribution of the Software by any person.

4.3 Trademarks. All trademarks and service marks relating to the Software (“Marks”) are the sole property of Ajar

Productions. This Agreement does not grant You any rights to use, copy, modify, or publicly display these Marks, without written permission from Ajar Productions.

4.4 No Modifications. You may not modify, port, adapt, translate, or create a derivative work of the Software.

4.5 No Reverse Engineering. You will not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Software.

4.6 No Transfer. YOU WILL NOT RENT, LEASE, LOAN, SELL, SUBLICENSE, ASSIGN, HOST, EXPORT, DISTRIBUTE, REDISTRIBUTE, TRANSMIT, CIRCULATE, OR TRANSFER YOUR RIGHTS TO THE SOFTWARE, NOR WILL YOU AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL'S OR LEGAL ENTITY'S COMPUTER. ADDITIONALLY, YOU MAY NOT TRANSFER EDUCATION, PRERELEASE, FREWARE, NOT-FOR-SALE, OR NOT-FOR-RESALE COPIES OF THE SOFTWARE OR SOFTWARE OBTAINED UNDER AN AJAR PRODUCTIONS LICENSE OR VOLUME LICENSE PROGRAM.

4.7 No Service Bureau. You will not use or offer the Software on a service-bureau basis.

#### **5. Updates.**

If the Software is an upgrade or update to a previous version of Ajar Productions software, You must possess a valid license to such previous version in order to use such upgrade or update. After You install such update or upgrade, You may continue to use any such previous version in accordance with its end-user license agreement only if (a) the upgrade or update and all previous versions are installed on the same Computer, and in the case of a Plug-in Product, installed within the same version of the Parent Software; (b) the previous versions or copies thereof are not transferred to another party or device, unless all copies of the update or upgrade are also transferred to such party or device; and (c) You acknowledge that any obligation Ajar Productions may have to support the previous version(s) may be terminated upon the availability of the upgrade or update. No other use of the previous version(s) is permitted after installation of an update or upgrade. Upgrades and updates may be licensed to You by Ajar Productions with additional or different terms.

#### **6. No Warranty.**

THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, AJAR PRODUCTIONS DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE, COMPLETE, OR CORRECT, OR APPROPRIATE FOR ANY PARTICULAR USE. AJAR PRODUCTIONS PROVIDES EVALUATION COPIES OF THE SOFTWARE SO THAT CUSTOMERS CAN ASSESS THE SOFTWARE.

#### **7. Limitation of Liability.**

TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, AJAR PRODUCTIONS WILL NOT BE LIABLE TO YOU FOR ANY LOSS, DAMAGES, CLAIMS, SPECIFIC RESULTS, OR COSTS WHATSOEVER INCLUDING ANY CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES; ANY LOST PROFITS, REVENUE, OR LOST SAVINGS; ANY DAMAGES RESULTING FROM BUSINESS INTERRUPTION, LOST DATA, THEFT OF HARDWARE OR SOFTWARE; ANY DAMAGES DUE TO PERSONAL INJURY, OR FAILURE TO MEET ANY DUTY OF CARE, OR CLAIMS BY A THIRD PARTY, EVEN IF AN AJAR PRODUCTIONS REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. IN ANY EVENT, AJAR PRODUCTIONS' AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT, IF ANY, YOU PAID TO AJAR PRODUCTIONS FOR THE SOFTWARE. THIS LIMITATION WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT. The foregoing liability limitations shall apply to the maximum extent allowed by applicable law. To the extent the foregoing liability limitations or the warranty disclaimers of Section 6 are not allowed by applicable law, then the liability of Ajar Productions, and Your remedy, shall be limited to the prompt: (a) re-supply of any defective product; or (b) refund of any license fees You paid for such defective product.

#### **8. Export Rules.**

You agree that the Software will not be shipped, transferred, or exported into any country, or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions, or regulations.

## **9. Governing Law.**

This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of California, USA, regardless of conflict of law provisions, and the parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the state courts in Marin County, California, USA or federal courts in San Francisco, California, USA, for any dispute arising from or relating to this Agreement. This Agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

## **10. Severability/Construction.**

If any provision of this Agreement is determined by a court of competent jurisdiction to be void and/or unenforceable, such determination will not affect the validity of the remainder of this Agreement, which will remain valid and enforceable according to its terms and any such void or unenforceable provision shall be deemed modified to the fullest extent enforceable under applicable law consistent with the parties' intent herein. The terms and conditions of this Agreement shall be construed fairly as to all parties, regardless of which party was responsible for the drafting of this Agreement.

## **11. Entire Agreement/Modification.**

This Agreement constitutes the entire agreement between You and Ajar Productions, and supersedes all previous or contemporaneous understandings or agreements between us, concerning the subject matter hereof. You acknowledge that Ajar Productions may at any time modify the Agreement. Ajar Productions will notify You of any such modification via e-mail and it would not take effect until You reply to the e-mail confirming Your assent. You may not amend any term or condition of the Agreement without the prior written consent of Ajar Productions.

## **12. Compliance with Licenses.**

If You are a business, company, or organization, You agree that, no more than once every 12 months, Ajar Productions or its authorized representative shall, upon 10 days' prior notice to You, have the right to inspect Your records, systems, and facilities to verify that Your use of any and all Ajar Productions software is in conformity with Your valid licenses from Ajar Productions. If a verification discloses that Your use is not in conformity with a valid license, You shall immediately obtain valid licenses to bring Your use into conformity. This Section 12 shall not be construed to limit the rights of Ajar Productions under applicable law.

## **13. Internet Connectivity and Privacy.**

13.1 Automatic Connections to the Internet. The Software may cause Your Computer, without additional notice, to automatically connect to the Internet and to communicate with an Ajar Productions web site for purposes that may include providing You with additional information, features, and functionality. Unless otherwise specified in Sections 13.2 and 13.3, when the Software automatically connects to the Internet, an Internet Protocol address ("IP Address") that is associated with Your current Internet connection is sent to an Ajar Productions web site. Ajar Productions may also collect certain information about Your Computer to facilitate, evaluate, and verify Your use of the site, including logging environmental variables (e.g., browser type, operating system, Parent Software version, referring or exit webpages, click patterns, Session ID [a unique identifier assigned to the browser in connection to the site], and the IP Address of Your Computer, etc.). Ajar Productions may also use such information to measure traffic patterns on the site and usage of products and services provided there. We do not match such information with personal information held about You by Ajar Productions unless we have Your consent or as otherwise described in the Ajar Productions Privacy Policy.

13.2 Updating. The Software may cause Your Computer, without additional notice, automatically to connect to the Internet (intermittently or on a regular basis) to check for updates or upgrades that are available for download or purchase and download on Your Computer and to inform Ajar Productions about the results of installation attempts. Please consult the Documentation for information about changing update settings.

13.3 Activation. The Software may cause Your Computer, without additional notice, and on an intermittent or regular basis, automatically to connect to the Internet in order to validate that the Software is being operated in accordance with this Agreement (a process referred to as "Activation"). In some cases, Software that fails to activate may offer only limited functionality or may not operate at all. Activation may occur in conjunction with software registration or serial validation. Please consult the Documentation for more details.

13.4 Privacy Policy and Terms of Use. Whenever the Software makes an Internet connection and communicates with an Ajar Productions web site, whether automatically or due to explicit user request, the Ajar Productions Privacy Policy (<http://ajarpredictions.com/legal/privacy>) shall apply. Additionally, unless You are provided with separate terms of use at that time, the Ajar Productions.com Terms of Use (<http://ajarpredictions.com/legal/terms>) shall apply to Your use of

any Ajar Productions web site. Please note that the Ajar Productions Privacy Policy allows tracking of web site visits and it addresses in detail the topic of tracking and use of cookies, web beacons, and similar devices.

#### **14. Peer-to-Peer Communications.**

Without additional notice, the Software may use Your connection to a local area network to connect automatically to other Ajar Productions software and, in doing so, may indicate on the local area network that it is available for communication with other Ajar Productions software. These connections may transmit the IP Address of Your connection to the local network. Please consult the Documentation for information about changing default settings.

#### **15. Online Services.**

15.1 Use of Ajar Productions' Online Services. The Software may cause Your Computer, without additional notice, and on an intermittent or regular basis, automatically to connect to the Internet to facilitate Your access to content and services that are provided to You by Ajar Productions. In addition, the Software may, without additional notice, automatically connect to the Internet to update downloadable materials from these services so as to provide immediate availability of these services even when You are offline. Please consult the Documentation for information about changing update settings.

15.2 Third-Party Providers. The Software may facilitate Your access to web sites maintained by third parties offering goods, information, software, and services ("Third-Party Online Service[s]"). Your access to and use of any Third-Party Online Services is governed by the terms, conditions, disclaimers, and notices found on such sites or otherwise associated with such Third-Party Online Services. Ajar Productions may at any time, for any reason, modify or discontinue the availability of any Third-Party Online Services. Ajar Productions does not control, endorse, or accept responsibility for Third-Party Online Services. Any dealings between You and any third party in connection with a Third-Party Online Service, including such party's privacy policies and use of Your personal information; 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.

#### **16. Term**

The term of this Agreement begins on the Commencement Date and will continue in full force and effect unless terminated in accordance with Section 17 below.

#### **17. Termination**

You may terminate this Agreement at any time by destroying all copies of the Software in Your possession. Either party hereto may terminate this Agreement if the other party commits a material breach and such party does not cure such material breach within thirty (30) days of written notice of such breach. You agree upon termination of this Agreement to destroy all copies of the Software in Your possession. Sections 3, 6, 7, and each other provision that may reasonably be construed to survive termination hereof, shall survive any termination of this Agreement.

#### **18. No waiver**

The delay or failure of either party hereto to prosecute its rights with respect to a breach hereunder will not constitute a waiver of the right to enforce its rights with respect to the same or any other breach.

#### **19. No Assignment**

You may not assign any or all of Your rights under this Agreement, whether by merger, change of control, operation of law, or otherwise, without the prior express written consent of Ajar Productions, and any such purported assignment without such written consent shall be void.