

Service Agreement

This Subscription Agreement (the "Agreement") is between HPlugins.com, ("HPlugins.com") and any purchaser or user ("Customer") of HPlugins.com products and services that accepts the terms of this Agreement ("Customer").

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING OR USING HPlugins.com PRODUCTS AND SERVICES. BY USING OR PURCHASING HPlugins.com PRODUCTS OR SERVICES, CUSTOMER SIGNIFIES ITS ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE OR PURCHASE HPlugins.com PRODUCTS AND SERVICES.

The Effective Date of this Agreement is the earlier of the date that Customer accepts this Agreement or the date that Customer uses HPlugins.com's products or services.

I. Terms and Conditions

A. GENERAL TERMS AND CONDITIONS

The term "Services" as used in this Agreement means, collectively, the Support Services provided under the purchased subscription and defined herein. The term "Software" means the subscription for the family of software products purchased under this Agreement and defined herein, if any. The term "Installed Systems" means the number of Systems on which Customer installs or executes the Software. The term "System" means any hardware on which the Software is installed, which may be, without limitation, a server, a work station, a virtual machine, a blade, a partition or an engine, as applicable. The parties agree that the terms of this Agreement will govern future purchases by Customer of HPlugins.com's products and services unless otherwise agreed by the parties in writing.

1. TERM AND TERMINATION

1.1 Term. The term of this Agreement shall be for the duration of all Services provided under this Agreement. The initial term for Services shall commence on the Effective Date of this Agreement and shall continue for a period of one (1) month unless a different term is specified by the parties at the time of purchase. Thereafter, the term for Services shall renew for successive terms of one (1) month each unless a different term is agreed to by the parties at the time of renewal and unless either party gives written notice to the other of its intention not to renew days prior to the commencement of the next term; provided, however, Customer shall have the right to terminate this Agreement at any time after the first month by prior written notice of termination to HPlugins.com. Customer shall remain obligated for all fees through the date of termination.

1.2 Termination for Breach. HPlugins.com may terminate this Agreement (a) in the event Customer fails to pay an invoice when due, (b) in the event Customer commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of written notice of material breach, or (c) as otherwise provided in this Agreement. Customer may terminate this Agreement in the event HPlugins.com commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of written notice of material breach.

2. PRICING, INVOICING AND TAXES. Customer agrees to provide HPlugins.com with accurate and complete billing information (including legal name, address, telephone number, and billing or credit information). Customer will report to HPlugins.com all changes to this information within thirty (30) days of the change. HPlugins.com reserves the right to suspend or cancel Services for non-payment. All fees are stated and must be paid in United States Dollars. If Customer is paying by credit card, then Customer authorizes HPlugins.com to bill Customer's credit card for the Services for the initial term and for the amount due at the time of renewal. If HPlugins.com has approved Customer to be invoiced, then HPlugins.com will invoice Customer for the total fees at the time of execution of this Agreement, and payment shall be

due within thirty (30) days of the invoice date and any additional fees shall be due within thirty (30) days of the invoice date. All prices and rates quoted by HPlugins.com are exclusive of any foreign, federal, state, or local sales, excise, use, or similar taxes. Customer agrees to pay all such taxes, when applicable, regardless of whether such taxes are originally charged on Customer's credit card or appear on HPlugins.com's original invoice, or are later levied on HPlugins.com or Customer by a taxing authority, excluding any taxes levied solely on the net taxable income of HPlugins.com.

3. **PAYMENT.** Except in the case of breach of this Agreement by HPlugins.com or termination of this Agreement as provided in Section 1.1 hereof, any and all payments of amounts due under this Agreement are non-refundable. In the event Customer fails to make payment to HPlugins.com in the manner provided by this Agreement, HPlugins.com's remedies include (a) suspending Services until HPlugins.com receives full payment from Customer for all fees, including late fees and interest, due, or (b) terminating this Agreement without notice.

4. **NON-TRANSFERABLE.** This Agreement, and all Services provided by HPlugins.com pursuant to this Agreement, may not be transferred, assigned or distributed without the prior written consent of HPlugins.com. Any attempted transfer, assignment or distribution without HPlugins.com's prior written consent shall terminate this Agreement, and HPlugins.com shall have no further obligation hereunder.

5. **WARRANTY (5.1)** During the term or any renewal of this Agreement, if (a) any portion of the Software is found to infringe any third party intellectual property rights, and (b) Customer has registered the Software with HPlugins.com, then with respect to each Installed System for which Customer has paid, HPlugins.com will, at its expense and option: (i) obtain the right for Customer to continue to use the Software consistent with this Agreement; (ii) modify the Software so that it is non-infringing; or (iii) replace the infringing component with a non-infringing component. (5.2) To the maximum extent permitted by applicable law, except as specifically stated in this Agreement, the Software, the Services, and any software program provided are provided and LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. HPlugins.com DOES NOT GUARANTEE THAT THE USE OF THE SOFTWARE and SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE.

6. **LIMITATION OF LIABILITY.** Neither party shall be in breach of this Agreement due to failure of performance that arises out of causes beyond its reasonable control. To the maximum extent permitted by applicable law, IN NO EVENT WILL HPlugins.com BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN TORT OR IN CONTRACT, INCLUDING LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING UNDER THIS AGREEMENT OR HPlugins.com'S PERFORMANCE INCLUDING WITHOUT LIMITATION (A) THE SOFTWARE, THE SERVICES (B) ANY INTERRUPTION OF USE OF THE SOFTWARE (C) FOR LOSS, INACCURACY OR CORRUPTION OF DATA, EVEN IF HPlugins.com HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HPlugins.com'S LIABILITY HEREUNDER EXCEED THE AMOUNT THAT CUSTOMER PAID TO HPlugins.com UNDER THIS AGREEMENT DURING THE PREVIOUS TWELVE MONTHS.

7. **CONFIDENTIALITY.** Customer and HPlugins.com agree to maintain the confidentiality of the proprietary information received by the other party including non-public technical and business information for a period of two (2) years after the termination of this Agreement. HPlugins.com's pricing and product roadmap are HPlugins.com's confidential information. This section shall not apply to any publicly available or independently developed information.

8. **ENTIRE AGREEMENT.** This Agreement shall constitute the exclusive terms and conditions with respect to the purchases of Software and Services under this Agreement by Customer from HPlugins.com, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Customer in such transactions. This Agreement contains the final, complete and exclusive statement of the agreement between the parties with respect to the transactions contemplated herein and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter herein are merged herein including any Subscription Descriptions and Subscription Purchase Terms. This Agreement may not be amended, supplemented or modified (or any right or power granted hereunder waived) except by written instrument signed by authorized officers of the parties hereto (or in the case of a waiver, signed by the party to be bound), which instrument makes specific

reference to this Agreement.

9. GENERAL. (9.1) This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California, U.S.A., without regard to choice of law provisions, except that the United Nations Convention on the International Sale of Goods shall not apply. The parties each agree that they are subject to the personal jurisdiction of the state and federal courts within the State of North Carolina, and each waives the right to challenge the personal jurisdiction of those courts over it. (9.2) Each party warrants that the person signing or accepting this Agreement is authorized to bind said party. (9.3) If one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, such holding will not impair the validity, legality, or enforceability of the remaining provisions. (9.4) Failure or delay on the part of any party to exercise any right, remedy, power or privilege hereunder will not operate as a waiver. (9.5) Any provision of this Agreement which may be reasonably expected to survive the termination of this Agreement, including, but not limited to, Sections 5.2 and 6, shall survive such termination. (9.6) HPlugins.com may supply Customer with technical data that is subject to export control restrictions. HPlugins.com will not be responsible for compliance by Customer with applicable export restrictions or obligations for such technical data. Each party agrees to comply with any applicable export control laws or regulations. (9.7) Any notice to be given pursuant to this Agreement, including any notice of change of address for notice, shall be deemed given when sent to HPlugins.com to HPlugins.com, P.O. Box 2736 Redondo Beach, CA 90278 and to Customer at the address or facsimile number indicated at the time of purchase: (a) three (3) business days after being deposited with the U.S. Postal Service, postage prepaid, first class, certified, return receipt requested; (b) upon receipt when delivered in person; (c) two (2) business days after being deposited with a reputable international overnight delivery service; or (d) one (1) business day after being transmitted by facsimile with confirmation of delivery to the number for such party set forth in this Agreement. (9.8) In the event of a dispute between the parties regarding payment under this Agreement, the non-prevailing party shall pay the reasonable attorney's fees of the prevailing party.

II. Support Services Service Levels

A. SUBSCRIPTION TERMS AND CONDITIONS

HPlugins.com will provide the purchased subscription(s) subject to the following terms.

1. DEFINITIONS:

"Platform" means the combination of the CPU and other hardware a computer system uses, its exact operating system including the version number, the compiler required, the type of libraries (e.g. libc, glibc), and the type of crypto library available (e.g. libcrypt, pam). Changes to any of these components which break binary compatibility, or prohibit functioning (including recompiling) of software, unless modified by HPlugins.com, constitute a different platform and may disqualify it from receiving Support Services. Should a platform be discontinued during the term of this Agreement, HPlugins.com will have the option to continue supporting Customer on that platform or to issue Customer a pro-rata refund.

"Software" means the software purchased under this Agreement, which is provided under HPlugins.com's trademarks and is subject to the applicable end user license agreement.

"Support Services" means the support services provided with the purchased subscription as further defined in this Agreement.

"Supported Hardware or Platform" means hardware or a platform that functions with the Software and components contemplated for use with the Software.

2. CUSTOMER OBLIGATIONS

2.1 Entitlement. In order to access and utilize Support Services, Customer will be required to provide HPlugins.com with its Customer name and e-mail address at the time of initiating the Support Service.

2.2 Customer's Computer System. Customer will be responsible for performing operations on Customer's computer system and HPlugins.com shall have no responsibility to perform operations on Customer's computer system. Customer acknowledges that HPlugins.com's ability to perform certain Support Services may be conditioned upon access to certain Customer information and access to Customer's computer system as reasonably requested by HPlugins.com. Such information may include, but is not limited to, the type of hardware Customer is using, a description of the problem for which Customer seeks Support Services, and additional software Customer is using that falls outside the Support Services scope of coverage. Customer understands and agrees that the completeness and accuracy of the information Customer provides to HPlugins.com may affect HPlugins.com's ability to provide Support Services. The Support Services purchased by Customer are intended for use only for the benefit of the Customer and only for the Installed Systems with subscriptions. Any unauthorized use of the Services will be deemed to be a material breach of this Agreement.

2.3 Designated Customer Contact. HPlugins.com will provide Support Services to Customer only by communication with the Customer's designated technical contact or contacts (the "Contact"). Customer shall use commercially reasonable efforts to maintain consistent Contacts during the term of this Agreement. Customer may not use a single Contact to act as a mere forwarding service for other personnel. The Contact may not use Support Services on the basis of this Agreement to benefit any person or entity other than the Customer. Each Contact must have read and/or write access to all necessary files. Each Contact must have English language communication skills and the relevant technical knowledge necessary to assist HPlugins.com in performing the Support Services contemplated under this Agreement. This knowledge includes familiarity with the Software and the Supported Hardware or Platform.

2.4 Support Portal. Customer may initiate Support Service requests through the web-based support portal located at HPlugins.com's main web site. The Contact(s) are entitled to open a secure login to the support portal and use the ticket manager application to submit a Support Service request for any covered Support Service. Each submitted Support Service request is given a unique identification number. Support Services logged through the support portal are managed using the English language.

B. SERVICE LEVELS FOR SUBSCRIPTIONS

1. Response Guidelines. A response to a request for Support Services shall consist of receipt of and acknowledgment by HPlugins.com of Customer's request for Support Services. HPlugins.com will use commercially reasonable efforts to provide a response within the response guideline period set forth in the table below during standard business hours and days as set forth in the table below, exclusive of HPlugins.com holidays. Customer acknowledges that a response may not include resolution for all requests for Support Services. HPlugins.com will use commercially reasonable efforts to provide answers and resolve Customer's requests for Support Services. However, Customer acknowledges and understands that no software is perfect or error free and that, despite HPlugins.com's commercially reasonable efforts, HPlugins.com may be unable to provide answers to or resolve some or all requests for Support Services. HPlugins.com makes no promises, guarantees, or assurances of any kind that it will be able to resolve all Customer Support Services requests.

2. Support Service Conditions.

2.1 HPlugins.com may, at its discretion, decline to provide Support Services for Software that has been modified or changed by Customer in any way, except as directed by HPlugins.com. HPlugins.com will provide Support Services for Supported Hardware and Platforms only. HPlugins.com will only provide Support Services for those Installed Systems for

which Customer has subscribed under this Agreement.

2.2 HPlugins.com may, at its discretion, decline to provide Support Services for the packages included in the Software.

Appendix 1

LICENSE AGREEMENT AND LIMITED PRODUCT WARRANTY HPlugins.com Plugins LINUX® AND HPlugins.com® APPLICATIONS

This agreement governs the use of the Software and any updates to the Software, regardless of the delivery mechanism. The Software is a collective work under U.S. Copyright Law. Subject to the following terms, HPlugins.com, Inc. ("HPlugins.com") grants to the user ("Customer") a license to this collective work pursuant to the GNU General Public License.

1. **The Software.** HPlugins.com Applications (the "Software") are an application consisting of several of software components. The end user license agreement for each component is located in the component's source code. With the exception of certain image files identified in Section 2 below, the license terms for the components permit Customer to copy, modify, and redistribute the component, in both source code and binary code forms. This agreement does not limit Customer's rights under, or grant Customer rights that supersede, the license terms of any particular component.

2. **Intellectual Property Rights.** The Software and each of its components, including the source code, documentation, appearance, structure and organization are owned by HPlugins.com and others and are protected under copyright and other laws. Title to the Software and any component, or to any copy, modification, or merged portion shall remain with the aforementioned, subject to the applicable license.

3. **Limited Warranty.** Except as specifically stated in this agreement or a license for a particular component, to the maximum extent permitted under applicable law, the Software and the components are provided and licensed "as is" without warranty of any kind, expressed or implied, including the implied warranties of merchantability, non-infringement or fitness for a particular purpose. HPlugins.com does not warrant that the functions contained in the Software will meet Customer's requirements or that the operation of the Software will be entirely error free or appear precisely as described in the accompanying documentation. This warranty extends only to the party that purchases the Software from HPlugins.com or a HPlugins.com authorized distributor.

4. **Limitation of Remedies and Liability.** To the maximum extent permitted by applicable law, the remedies described below are accepted by Customer as its only remedies. HPlugins.com's entire liability, and Customer's exclusive remedies, shall be: If the Software media is defective, Customer may return it within 30 days of delivery along with a copy of Customer's payment receipt and HPlugins.com, at its option, will replace it or refund the money paid by Customer for the Software. To the maximum extent permitted by applicable law, HPlugins.com or any HPlugins.com authorized dealer will not be liable to Customer for any incidental or consequential damages, including lost profits or lost savings arising out of the use or inability to use the Software, even if HPlugins.com or such dealer has been advised of the possibility of such damages. In no event shall HPlugins.com's liability under this agreement exceed the amount that Customer paid to HPlugins.com under this agreement during the twelve months preceding the action.

5. **Export Control.** As required by U.S. law, Customer represents and warrants that it: (a) understands that the Software is subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations (currently Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria); (c) will not export, re-export, or transfer the Software to any prohibited destination, entity, or individual without the necessary export license(s) or authorizations(s) from the U.S. Government; (d) will not use or transfer the Software for use in any sensitive nuclear, chemical or biological weapons, or missile technology end-uses

unless authorized by the U.S. Government by regulation or specific license; (e) understands and agrees that if it is in the United States and exports or transfers the Software to eligible end users, it will, as required by EAR Section 740.17(e), submit semi-annual reports to the Commerce Department's Bureau of Industry & Security (BIS), which include the name and address (including country) of each transferee; and (f) understands that countries other than the United States may restrict the import, use, or export of encryption products and that it shall be solely responsible for compliance with any such import, use, or export restrictions.

6. Third Party Programs. HPlugins.com may distribute third party software programs with the Software that are not part of the Software. These third party programs are subject to their own license terms. The license terms accompany the programs. If Customer does not agree to abide by the applicable license terms for such programs, then Customer may not install them. If Customer wishes to install the programs on more than one system or transfer the programs to another party, then Customer must contact the licensor of the programs.

7. General. If any provision of this agreement is held to be unenforceable, that shall not affect the enforceability of the remaining provisions. This agreement shall be governed by the laws of the State of California and of the United States, without regard to any conflict of laws provisions, except that the United Nations Convention on the International Sale of Goods shall not apply.

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