

HEXA-2 Corporation
TERMS & CONDITIONS

These HEXA2 Terms and Conditions are between NetStairs.com Inc. and its customers, affiliates (collectively, "HEXA2"), and "you" (collectively, the "Parties").

You agree that this Agreement (defined below) is like any written negotiated agreement signed by you. 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 HEXA2 that supplements or supersedes all or portions of this agreement.

1. Definitions.

"Add-In" means the HEXA2 Add-in that may be provided to you by HEXA2 in connection with your use of the Service, and any modified versions and copies of, and upgrades, updates and additions to such add-in, provided to you by HEXA2 at any time. The Add-In is a client software upgrade automatically delivered to you on an as-needed basis so that you may use certain features of the Service (such as broadcasting audio or video).

"Agreement" means these terms and conditions, the License Metrics, and the HEXA2 Online Privacy Policy, which is located at <http://www.HEXA2meeting.com/privacy>, or any successor Web site thereto.

"Appointee" shall have the meaning set forth in Section 2.4 (Appointments).

"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.

"Information" means personally identifiable information.

"License Metrics" means terms set forth in a separate writing (such as a quote or written agreement between you and HEXA2) describing the scope of your right to use the Service. The License Metrics are incorporated by reference into this Agreement.

"Meeting" means an HEXA2[®] Room offered in a variety of formats (Public, Private, and Premium).

"Meeting Attendees" mean individuals who attend an online meeting or telephone conference enabled by the Service and hosted by you.

"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.

"Privacy Policy" shall have the meaning set forth in (Privacy Terms).

"Service" means individually and collectively, the HEXA2[®] founded on Adobe Flash Media Server, managed hosted service provider network and/or the HEXA2[®] services.

“Service Term” means the period of time for which you have elected to pay for and/or use the Service.

2. Use of the Service.

2.1 Authority to Use Service. You represent and warrant that you have all necessary right, power and authority to enter into this Agreement and to perform the acts required of you hereunder including having a valid license to use the software applications that generate Content, and the right to submit Content and your or a Participant’s Information in connection with the Service. Otherwise, you are not permitted to submit such Content or Information to HEXA2 or the Service.

2.2 Access to Service. You acknowledge that your ability to access the Service may require the payment of third party fees (such as Adobe Licenses, ISP, or airtime charges) and that you are responsible for paying such fees. HEXA2 is not responsible for any equipment you may need to be able to access the Service.

2.3 Log-In Information. To gain access to and use the Service, you may be required to create a log-in ID and password (“Log-In Information”). You are responsible for all activity occurring under your Log-In Information, and you must keep your Log-In Information confidential and not share your Log-In Information with third parties. HEXA2 has no obligation or responsibility with regard to your use, distribution, disclosure, or management of Log-In Information. Notwithstanding the foregoing, HEXA2 may require you to change your Log-In Information if such Log-In Information is inconsistent with the terms of this Agreement.

2.4 Appointments. You may appoint individuals within your organization or other third parties to administer various functions of the Service (“Appointees”), as applicable. Notwithstanding anything to the contrary set forth in Section 2.3 (Log-In Information) of the Agreement, you may, if applicable, provide to Appointees specific Log-In Information for the sole purpose of enabling such Appointee to administer various functions of the Service in accordance with the terms of this Agreement. You are solely responsible for all acts or omissions of Appointees in connection with the Service.

2.5 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, HEXA2, its affiliates, suppliers, licensors, and resellers specifically disclaim any express or implied warranty of fitness for such purposes.

3. License.

3.1 The Service. Subject to your compliance with the terms and conditions of this Agreement, HEXA2 grants to you a non-exclusive, non-transferable, revocable right to access and use the Service according to the terms and conditions of this Agreement and the applicable License Metrics.

3.2 The Add-In. The terms in this Section 3.2 (The Add-In) apply to you solely if the License Metrics indicate you have a license to use HEXA2 Room(s) powered by Adobe Flash Media Servers.

3.2.1 License. Subject to the terms and conditions of the Agreement, HEXA2 grants to you a non-exclusive, non-transferable, revocable license to install and use the Add-In solely in conjunction with the

Service. You shall not modify, port, adapt or translate the Add-In. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Add-In. You cannot use the Add-In on a timeshare or service bureau basis or host, on a subscription basis or otherwise, or use the Add-In to utilize any functionality of the Service for a third party.

3.3 HEXA2 Rooms and HEXA2 Partners. The number of copies of HEXA2 Rooms and HEXA2 partners installed or used by you or Participants must coincide with the number of connections of the Service purchased by you, if any, as set forth in the License Metrics. The terms of this Section 3.3 (HEXA2 Rooms and HEXA2 Partners) are in addition to any terms contained in an end user license agreement accompanying HEXA2 Rooms and HEXA2 Partners.

4. Ownership of the Service and Marks. You acknowledge that HEXA2 and its licensors own all right, title, and interest in: (a) the Service; (b) any HEXA2 software provided in connection with the Service; and (c) all graphics, logos, service marks, and trade names, including third-party names, product names, and brand names used by HEXA2 in connection with the Service (the "Marks"). Notwithstanding the foregoing, you, Appointees, or your respective licensors, as applicable, own all right, title, and interest in and to any graphics, logos, service marks, and trade names used by you or Appointees, as applicable, in connection with the Service. You are welcome to send suggestions on improving the Service, but in doing so, you acknowledge and agree that such suggestions will become the property of HEXA2, and HEXA2 has no obligation to compensate you for such suggestions.

5. Trial Use of Service. This Section 5 (Trial Use of Service) applies to you solely if you have subscribed to the Service on a trial basis.

5.1 Trial Use. In addition to the other terms of this Agreement, as a trial user of the Service, your right to access and use the Service is limited as provided in the e-mail communication from HEXA2 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 HEXA2 at a later time with different features, for a fee, or not at all, as determined by HEXA2 in its sole discretion. In order to maintain a consistent quality of service, HEXA2 reserves the right to temporarily suspend trial access to the Service as needed.

5.2 Termination of Trial Service. Your right to use the Service on a trial basis shall terminate immediately upon expiration of the limited time period granted at the time you subscribed to the Service on a trial basis. In addition, HEXA2 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.

6. Term and Termination.

6.1 Term. The term of this Agreement is specified in the License Metrics.

6.2 Termination.

6.2.1 By HEXA2. HEXA2 may at any time and upon written notice to you immediately terminate this Agreement and your access to the Service, or suspend or restrict your access to the Service in whole or in part, if:

(a) you breach this Agreement and do not cure such breach within five (5) business days of receiving written notice of the breach from HEXA2;

(b) you breach Section 3 (License) or Section 4 (Ownership of the Service and Marks) of this Agreement; or

(c) HEXA2 determines in its sole and exclusive judgment that terminating your access to the Service is advisable for security reasons, to protect HEXA2 from liability, or for the continued normal and efficient operation of the Service.

6.2.2 By You. You may terminate this Agreement at any time for any reason or no reason by contacting HEXA2 customer service.

6.3 Effect of Termination. Upon termination of this Agreement, you must immediately cease using the Service. HEXA2 reserves the right to delete any data files associated with Content, Information, or your or use of the Service upon termination of the Service. The following Sections of this Agreement shall survive termination of this Agreement.

7. Content.

7.1 Your Content. You may upload Content to the Service in connection with your use of the Service. HEXA2 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 HEXA2's servers at your request or the request of an Appointee, as necessary for HEXA2 to provide the Service and in accordance with HEXA2's then-current storage policies. You are solely responsible for Content including making and keeping backup copies of Content. HEXA2 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, HEXA2 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 restrict access to your Content. You are solely responsible for applying the appropriate level of access to your Content.

7.2 Your Representations and Warranties Regarding Content. You represent and warrant that (a) you are the owner, licensor, or authorized user of all Content; and (b) 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 HEXA2, 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, Information, 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).

7.3. HEXA2 Access to Content. You acknowledge that the Service is automated (e.g., Content is uploaded using software tools) and that HEXA2 personnel will not access, view, or listen to any Content, except as reasonably necessary to perform the Service, including but not limited to the following: (a) respond to support requests; (b) detect, prevent, or otherwise address fraud, security, or technical issues; (c) as deemed necessary or advisable by HEXA2 in good faith to conform to legal requirements or comply with legal process; or (d) enforce this Agreement, including investigation of potential violations hereof, as further described in Section 11 (Investigations).

8. Notification of Copyright Infringement. HEXA2 will, in appropriate circumstances, terminate your license to use the Service if you infringe the intellectual property rights of others. HEXA2 will investigate notices of copyright infringement and take appropriate actions under the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c)(2) ("DMCA"). If you believe that your work has been used or copied in a way that constitutes copyright infringement and such infringement is occurring in connection with the Service, please provide, pursuant to the DMCA, written notification of claimed copyright infringement to the Designated Agent for the Service (identified below), which must contain the following elements:

- A physical or electronic signature of the person authorized to act on behalf of the owner of the copyright interest that is alleged to have been infringed;
- A description of the copyrighted work or works that you claim have been infringed and identification of what content in such work(s) is claimed to be infringing and which you request to be removed or access to which is to be disabled;
- A description of where the content that you claim is infringing is located on the Service;
- Information sufficient to permit HEXA2 to contact you, such as your physical address, telephone number, and e-mail address;
- A statement by you that you have a good faith belief that the use of the content identified in your Notice in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- A statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner's behalf.

HEXA2's Designated Agent for Notice of claims of copyright infringement can be reached as follows:

By mail:

HEXA2 Corporation, Suite 600
1800 Century Park East
Los Angeles, Ca. 90067, USA

By telephone: 310-789-5875

By fax: 310-229-5799

By e-mail: inquiry@HEXA2.com

The Designated Agent should be contacted only if you believe that your work has been used or copied in a way that constitutes copyright infringement and such infringement is occurring in connection with the Service. Any other inquiries directed to the Designated Agent will not receive a response.

9. Links. HEXA2 may provide links to other Web sites or resources as part of the Service as a convenience to you. HEXA2 is not responsible for the contents, products or services on any third party site, and the inclusion of any link does not imply that HEXA2 endorses the content on such third party sites. You may visit such third party sites solely at your own risk.

10. Use Restrictions. In connection with your access or use of the Service, you agree not to:

- (a) 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;
- (b) use the Service in any manner that could damage, disable, overburden, or impair any HEXA2 server, or the network(s) connected to any HEXA2 server or interfere with any other party's use and enjoyment of the Service;
- (c) attempt to gain unauthorized access to service, materials, other accounts, computer systems or networks connected to any HEXA2 server or to the Service, through hacking, password mining, or any other means;
- (d) obtain or attempt to obtain any materials or information through any means not intentionally made available through the Service;
- (e) host, on a subscription basis or otherwise, the Service, including any related application, (i) to permit a third party to use the Service to create, transmit, or protect any content, or (ii) to conduct conferences, online meeting services, or training sessions for a third party;
- (f) engage in any systematic extraction of data or data fields, including without limitation e-mail addresses;
- (g) disclose, harvest, or otherwise collect Information, including e-mail addresses, or other private information about any third party without that party's express consent;
- (h) transmit junk mail, spam, surveys, contests, pyramid schemes, chain letters, or other unsolicited e-mail or duplicative messages;
- (i) 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);
- (j) defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others; or
- (k) 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.

11. Investigations. HEXA2 does not generally monitor user activity occurring in connection with the Service. If HEXA2 becomes aware, however, of any possible violations by you of Sections 7.2 (Your Representations and Warranties Regarding Content), 10 (Use Restrictions), or any other provision of this Agreement, HEXA2 reserves the right to investigate such violations, and HEXA2 may, at its sole discretion, terminate immediately your license to use of the Service or change, alter or remove Content, in whole or in part, without prior notice to you. If, as a result of such investigation, HEXA2 believes that criminal activity has occurred, HEXA2 reserves the right to refer the matter to, and to cooperate with, any and all applicable law enforcement authorities. HEXA2 is entitled, except to the extent prohibited by applicable law, to disclose any information, including Information, about you in HEXA2's possession in connection with your use of the Service to law enforcement or other government officials, as HEXA2 in its sole discretion believes to be necessary or appropriate.

You agree to indemnify and hold HEXA2 harmless from and against any and all liabilities, costs and expenses, including reasonable attorneys' fees, related to or arising from your Content, the Content of Participants, and your or any Participant's use of the Service.

12. Privacy.

12.1 Privacy Terms. The terms of the HEXA2 Online Privacy Policy ("Privacy Policy"), located at <http://www.HEXA2meeting.com/privacy>, or any successor website thereto, and the terms of this Section 12 (Privacy) govern HEXA2's collection and use of Information in connection with the Service. If there is any conflict between the terms of the Privacy Policy or the terms of this Agreement, the terms of this Agreement shall control. Any collection of Information from Participants initiated by you will be stored on HEXA2's servers in accordance with HEXA2's then-current storage policies, but such collection is subject to your privacy statement, and the Privacy Policy shall not apply to such collection. HEXA2 may make changes to the Privacy Policy from time to time, and such changes will be communicated to you in the text of the Privacy Policy. Please visit the Privacy Policy regularly for updates.

12.2 Non-U.S. Residents. You agree and acknowledge that your Information collected through the Service or in connection with the Service may be transferred across national boundaries and stored and processed in any of the countries around the world in which HEXA2 maintains offices, including the United States.

12.3 Types of Information Collected. In addition to the types of Information set forth in the Privacy Policy, HEXA2 may collect certain information as set forth in this Section 12.3 (Types of Information Collected).

12.3.1 Service Use Information. HEXA2 may collect information regarding your use of the Service, such as the name of the Internet service provider and the Internet Protocol address through which you access the Internet; the time you access the Service; and the Internet address of any referring Web site and the Internet address of the Web site from which you linked directly to HEXA2's web site. HEXA2 uses this information to support the Services and, if you have opted-in to receive communications from HEXA2, to send to you communications about HEXA2, its products and services.

12.3.2 Information Collected with HEXA2 Services. At your request or the request of an Appointee(s), the Service may collect certain information, including but not limited to: (a) which meeting slides were viewed by you and by Meeting Attendees; (b) your answers and the answers of Meeting Attendees to polls initiated by you or an Appointee; (c) real time "chat" between users of the Service and between users and you or Appointee(s); and (e) any other information you provide to the Service, either on your own accord or as requested by an Appointee(s), such as your name, address, phone number, e-mail address, or any other personally identifying information. The Service will record such information. You and Appointees may see such information, and some information, such as "chat" or your questions, may be shared with and stored by other users of the Service at the request of you or an Appointee(s) or as an automatic function of the Service. Except as otherwise stated in Section 11 (Investigations), HEXA2 does not share your Information with any other third parties.

12.4 Notice Regarding Recording and Privacy. THE HEXA2 SERVICE MAY ALLOW YOU OR AN APPOINTEE(S) TO RECORD MEETINGS AND TO COLLECT AND UTILIZE IDENTIFYING INFORMATION ABOUT YOU AND MEETING ATTENDEES, SUCH AS YOUR NAME, VOICE, OR LIKENESS. THE LAWS OF SOME STATES OR COUNTRIES REQUIRE (A) A MEETING ATTENDEE TO GRANT HIS/HER CONSENT PRIOR

TO ANY RECORDING OF COMMUNICATIONS; AND (B) RESTRICTIONS ON THE COLLECTION, STORAGE, AND USE OF PERSONALLY IDENTIFYING INFORMATION. You are responsible for ensuring collection of all such consents and compliance with all such restrictions, and therefore you shall indemnify, defend, and hold HEXA2 harmless from any claim or suit connected to recordings by you or Appointee(s) of the communications and likeness of Meeting Attendees.

12.5 Storage and Use of Information. HEXA2 stores your Information and the Information of Participants in accordance with HEXA2's then-current storage policies and as requested by you or Appointee(s). HEXA2 will delete your Information and Information of Meeting Attendees and other Participants from HEXA2's servers ultimately when this Agreement terminates and in accordance with HEXA2's then-current data storage policies.

12.6 Security. HEXA2 has implemented technical safeguards and procedures to protect communications with the Service including communication of Content and Information. In addition, HEXA2 will only disclose Content and Information in accordance with instructions provided by you through use of the Service and as otherwise provided in the Privacy Policy. Notwithstanding the foregoing, the security of communications sent over the Internet (including by e-mail) is subject to many factors outside of HEXA2's control and, as a result, HEXA2 does not guarantee the security or privacy of such communications. For more information on the security measures HEXA2 has implemented with respect to the Service, please see the applicable Service documentation.

12.7 Communications from HEXA2.

12.7.1 Service E-Mails. Notwithstanding any communications preferences indicated by you, HEXA2 may send to you service-related e-mails regarding service maintenance events or modifications to the functionality or delivery of the Service.

12.7.2 Communications from HEXA2 to U.S. Trial Users. THE TERMS OF THIS SECTION 12.7.2 (COMMUNICATIONS FROM HEXA2 TO U.S. TRIAL USERS) APPLIES TO YOU SOLELY IF YOU HAVE SUBSCRIBED TO THE SERVICE ON A TRIAL BASIS AND RESIDE IN THE UNITED STATES. NOTWITHSTANDING ANY COMMUNICATIONS PREFERENCES INDICATED BY YOU IN CONNECTION WITH YOUR CREATION OF LOG-IN INFORMATION OR OTHERWISE, YOU AGREE THAT HEXA2 MAY CONTACT YOU REGARDING THE SERVICE DURING THE TERM OF YOUR TRIAL SUBSCRIPTION.

12.8 Information of Participants. As between HEXA2 and you, you shall have sole responsibility for any and all Information of Participants used and submitted in connection with the Service, and HEXA2 shall have no responsibility in connection thereto. You shall comply with all data protection and privacy laws and rules applicable to Information of Participants. You shall defend, indemnify, and hold harmless HEXA2 from any claim, suit or proceeding brought against HEXA2 by a Participant in connection with any acts or omissions with regards to such Information of Participants. E-mails related to the Service are generally sent to Participants by you and not by HEXA2. As a result, even though certain Participants may have opted-out from receiving communications from HEXA2, such Participants may receive certain Service-related e-mails sent by you.

13. Service Level Agreement.

13.1 Service Availability Objective. HEXA2's objective is to make reasonable efforts to provide Service Availability of 95.9% as measured on a monthly basis ("Service Availability Objective"). Service

Availability is defined as the time that the Service is capable of receiving, processing, and responding to requests, excluding (a) Scheduled Maintenance, (b) Customer Error Incidents, and (c) Force Majeure. Service Availability is calculated as a percentage by dividing the number of minutes the Service is available during the applicable month by the number of total minutes in the applicable month, excluding in all cases Scheduled Maintenance, Customer Error Incidents, and Force Majeure.

13.2 Remedy for Failure to Achieve Service Availability Objective. At your request HEXA2 will calculate your Service Availability during a given calendar month. In the event that the Service Availability Objective was not met in a given month, then for each day in such month that the duration of the Service unavailability exceeds four (4) continuous hours, you are entitled to receive a one (1) day Service credit, subject to the Agreement and requirements of this Section 13 (Service Level Agreement). For purposes of calculating the Service Availability Objective, HEXA2 will only consider the Service unavailable if you opened a trouble ticket relating to the Service unavailability with the HEXA2 customer support department within three (3) business days of the Service unavailability. To obtain a credit for HEXA2's failure to meet the Service Availability Objective, you must request such credit in writing no later than the calendar month following the month of the Service unavailability giving rise to your credit request. In the event of a conflict between the data in your records and HEXA2's records, the data in HEXA2's records shall prevail. Any Service credit due hereunder will be applied to your account at the conclusion of the then-current Service Term. If you purchased the Service on a monthly or pay-per use basis, you are not eligible for any credits arising from or relating to Service unavailability. The Service credit offered in this Section 13 (Service Level Agreement) shall be your sole and exclusive remedy for any failure of the Service or any failure of HEXA2 to meet the Service Availability Objective. Any unused Service credits shall expire upon termination of this Agreement.

13.3 Definitions.

13.3.1 Scheduled Maintenance is defined as any maintenance performed during HEXA2's standard maintenance windows (currently occurring between Saturday 12:01am Eastern Time and Sunday at 11:59pm Eastern Time, and weekdays between 6:00pm Eastern Time and 11:59pm Eastern Time) and any other maintenance of which you are given at least forty-eight (48) hours advance notice. HEXA2 may perform maintenance on some or all of the Service in order to upgrade hardware or software that operates or supports the Service, implement security measures, or address any other issues it deems appropriate for the continued operation of the Service.

13.3.2 Customer Error Incident is defined as any Service unavailability resulting from your applications, Content, or your equipment, or the acts or omissions of any user of the Service.

13.3.3 Force Majeure is defined as acts of God, terrorism, labor action, fire, flood, earthquake, governmental acts, orders, or restrictions, denial of service attacks and other malicious conduct, utility failures, or any other cause of Service unavailability that was beyond HEXA2's reasonable control.

14. 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. HEXA2 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 HEXA2. 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 HEXA2's designated audit or inspection team access to the relevant records and facilities and prompt and reasonable cooperation in the audit. You shall pay HEXA2 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 14 (Audit). 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 14 (Audit). This provision does not limit any additional rights and remedies at law or in equity that HEXA2 may have due to unauthorized use of the Service.

15. DISCLAIMER OF WARRANTIES.

15.1 THE SERVICE AND THE ADD-IN ARE 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, HEXA2, ITS AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, RESELLERS, LICENSORS, AND ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICE AND THE ADD-IN 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, HEXA2 DOES NOT WARRANT OR REPRESENT THAT THE SERVICE WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT HEXA2'S SERVERS AND SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT HEXA2'S SECURITY PROCEDURES AND MECHANISMS WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO INFORMATION OR CONTENT BY THIRD PARTIES.

15.2 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

16. Limitation of Liability.

16.1 NEITHER HEXA2 NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE THE SERVICE OR ANY SOFTWARE OR ACCESS DATA, INFORMATION OR CONTENT, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE AND BASED ON ANY THEORY OF LIABILITY INCLUDING STATUTE, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF HEXA2 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.

16.2 HEXA2'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO 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. HEXA2'S SUPPLIERS SHALL HAVE NO LIABILITY TO YOU FOR ANY REASON.

16.3 THE LIMITATIONS ON LIABILITY IN THIS SECTION 16 (LIMITATIONS OF LIABILITY) ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS

AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE. Nothing contained in this Agreement limits HEXA2's liability to you in the event of death or personal injury resulting from HEXA2's gross negligence.

17. **Governing Law.** The Service is controlled by HEXA2 from its offices within the state of Florida, United States of America. By accessing and using the Service, you and HEXA2 agree that all matters relating to this Agreement and your access to, or use of, the Service shall be governed by and construed in accordance with the substantive laws in force in: (a) the State of Florida, if you obtained a subscription to the Service when you are in the United States, Canada, United Kingdom, and Europe. (c) England, if you obtained a subscription to the Service when you are in any jurisdiction not described above. The respective courts of Broward County, Florida when Florida law applies, and the competent courts of London, England, when the law of England applies, shall each have non-exclusive jurisdiction over all disputes relating to this agreement. This agreement will not be governed by the conflict of law rules of any jurisdiction, UCITA, or the United Nations Convention on Contracts for the International Sale of Goods, the application of which are expressly excluded.

18. **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.

19. **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 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 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.

20. **Miscellaneous.** You are solely responsible for your familiarity and compliance with any laws that may prohibit you from participating in or using any part of the Service. If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the Parties, and all other provisions will remain in full force and effect. HEXA2's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by HEXA2 in writing. Your rights hereunder may not be assigned or transferred to any third party. Each Party will provide the other with written notice under this Agreement by sending the other party notice as follows: (a) for you, notice will be sent to the e-mail address associated with your account, and (b) for HEXA2, notice will be sent to HEXA2 email: privacy@hexa2.com. In the event the terms of this Agreement, the Privacy Policy, or the License Metrics conflict, the documents shall have the following order of precedence: (i) the License Metrics, (ii) the Agreement, and (iii) the Privacy Policy. This Agreement, including the Privacy Policy and License Metrics, constitutes the entire agreement between you and HEXA2 and supersedes all prior agreements, representations, and understandings between the Parties regarding the subject matter contained herein.

Last Updated: November 10, 2008