

ADOBE AGENCY PARTNER PROGRAM AGREEMENT

A. This Adobe Agency Partner Program Agreement (“Agreement”) sets forth the terms and conditions agreed to between Adobe (as defined below) and the individual or entity submitting the membership application form as a Member (as defined below) for the Adobe Agency Partner Program (the “Program”). The parties to the Agreement are Adobe and Member as described in the Program membership application form. “Member” means a small to medium independently-owned agency who meets the Member Obligations set forth in Section 3. If Member is resident in the United States, Canada, or Mexico, “Adobe” means Adobe Systems Incorporated, a Delaware corporation (“Adobe Delaware”). If Member is resident in any other country, “Adobe” means Adobe Systems Software Ireland Limited, a company incorporated in the Republic of Ireland (“Adobe Ireland”). All references to Adobe herein will correspondingly either refer to Adobe Delaware or Adobe Ireland.

B. The Program. If accepted into the Program, Member will be eligible to access various specified benefits as further described in Section 2 of this Agreement (“Benefits”). The Benefits may include access to certain Adobe products technologies and services (“Products”). The Benefits will be limited to those that Adobe makes available in its sole discretion from time to time to Members and shall be subject to availability. Adobe may change its Benefits on 30 days’ notice to Members. Benefits apply only to Members who are not in breach of the Agreement. Benefit options, conditions and restrictions are further described in Section 2. The Benefits and Member Obligations set forth herein are intended to allow Adobe and Member to showcase Member’s relationship with Adobe through Member’s use of Adobe Products to create and deliver the innovative project or campaign Member selects to be featured.

C. Exhibits. Additional terms and conditions to this Agreement are attached to and made a part of this Agreement as exhibits (“Exhibits”).

Exhibit A.	Adobe Trademarks Terms and Restrictions on Use
Exhibit B.	Sample Prerelease Agreement

PLEASE CAREFULLY REVIEW THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT IS NOT EFFECTIVE UNLESS AND UNTIL MEMBER HAS RECEIVED NOTICE OF ACCEPTANCE INTO THE PROGRAM FROM ADOBE, AND MEMBER SHALL NOT BE ELIGIBLE FOR BENEFITS UNTIL SUCH TIME. BY SUBMITTING MEMBER’S MEMBERSHIP APPLICATION, MEMBER CERTIFIES THAT: MEMBER HAS READ AND UNDERSTANDS THE TERMS OF THIS AGREEMENT DRAWN UP IN ENGLISH, INCLUDING EACH APPENDIX AND EXHIBIT; MEMBER IS BECOMING A PARTY TO THIS AGREEMENT AND CONSENTS TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT; ALL INFORMATION IN THE MEMBERSHIP APPLICATION IS COMPLETE, TRUE, ACCURATE AND NOT MISLEADING; AND THE PERSON SUBMITTING THE MEMBERSHIP APPLICATION ON BEHALF OF THE NAMED MEMBER IS DULY AUTHORIZED TO BIND MEMBER TO THESE TERMS. IF MEMBER DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, MEMBER IS NOT ELIGIBLE TO PARTICIPATE IN THE PROGRAM.

PROGRAM TERMS AND CONDITIONS

In connection with Member's participation in the Program, Member and Adobe agree as follows:

1. ENROLLMENT IN THE PROGRAM. To apply for enrollment, Member must submit a complete membership application form ("Membership Application"). Adobe will evaluate Member's Membership Application and will notify Member of Adobe's acceptance or rejection of Member's Membership Application. Adobe may reject Member's Membership Application at its sole discretion for any reason, including, but not limited to, a determination that Member does not meet any applicable Membership Prerequisites. If accepted, Member will be responsible for all of Member's expenses incurred in connection with Member's participation in the Program.

2. PROGRAM BENEFITS.

2.1 General. Adobe will provide certain Benefits to Member as set forth herein. To be eligible to receive any Benefits hereunder, Member must meet the Member Obligations set forth in Section 3. Adobe reserves the right to refuse access to certain Products by Members who may be competitors of Adobe, as determined by Adobe in its sole discretion. Notwithstanding the foregoing, Adobe reserves the right to change or revoke any Benefit as set forth herein. Adobe shall not be required to provide any Benefit relating to questions or problems arising out of: (a) Member's use of any Product or Benefit in a manner for which it was not intended; (b) accident; or (c) Member's negligence, misuse, or modification of any Product or Benefit.

2.2 Access to Restricted Information on Adobe's Website. Member may be granted access to certain restricted and confidential portions of Adobe's sites in connection with a Benefit or group of Benefits, including, but not limited to Adobe's Partner Portal (the "Restricted Sites"). Member will limit Member's use of the Restricted Sites in the manner specified by Adobe and subject Terms of Use and Privacy Policies associated with the Restricted Sites as well as to the restrictions on the use and disclosure of Confidential Information as described in [Section 7](#).

2.3 Training. Member may be invited to participate in various training programs proposed by Adobe from time to time. All such training is subject to availability and may be subject to additional fees and costs.

2.4 Adobe Communications and Other Content. Adobe may provide Member with access to certain newsletters, technical bulletins and other content from Adobe ("Adobe Content"). Member will be bound by the terms and conditions of any and all agreements distributed with or as part of Adobe Content including the license and restrictions set forth in [Section 4.2](#) below. If Member does not agree to

such terms and conditions, Member shall not use such Adobe Content.

2.5 Access to Prerelease Software. Member's Benefits may include access to software and related documentation prior to their commercial release by Adobe ("Prerelease Software"). If such Benefit is provided, Member will be bound by the terms of any and all agreements distributed with or as part of Prerelease Software and is bound by the terms for any and all Prerelease Software, a sample of which is attached hereto as [Exhibit B](#) ("License Agreement for Prerelease Software"). If Member does not agree to such Pre-Release Software terms and conditions, Member shall not use the Pre-Release Software.

2.6 Adobe Referrals to Member. Member's Benefits may include possible referrals of Adobe customers to Member by Adobe. In connection with its receipt of any such Benefits, Member grants Adobe the right to post Member's name, contact information and other applicable information to Adobe's websites and to otherwise disclose and disseminate such information to potential customers. Referral listings will generally include Member's business name, city, telephone number, and a summary of capabilities as provided on Member's Agency Partner Portal profile. Customer referrals to Member pursuant to the Program will be based upon the information provided by Member in Member's Agency Partner Portal profile. Member certifies that such information is accurate and complete. Whether to make referrals, or the process of making referrals, will be determined by Adobe in its sole discretion, taking into account Member's geographical location, equipment, capabilities, services provided and the like.

2.7 Links. Member may be authorized to place links to Adobe's website(s), available through the Program, from Member's World Wide Web site ("Member's Site"). If so authorized, Adobe will provide Member with guidelines and graphical artwork to use in connection with linking to Adobe's website(s), and Member may select or remove such links, subject to the terms of this Agreement. Member will properly code all links to Adobe's websites in the manner specified by Adobe, comply with terms governing the use of Adobe Trademarks set forth in [Section 4](#) of this Agreement and will cooperate with Adobe in establishing and maintaining such links. Member is also responsible for removing and/or informing Adobe of potential stale links. Adobe may reject Member's Membership Application or terminate Member's right to link to Adobe's sites, at Adobe's sole discretion for any reason, including, but not limited to, a determination that Member's Site: is unsuitable for or incompatible with the Program; incorporates images or

content that are in any way unlawful, offensive, profane, harmful, threatening, defamatory, obscene, harassing or racially, ethically or otherwise objectionable; facilitates illegal activity, promotes or depicts sexually explicit images, obscene or pornographic images; promotes or depicts violence; promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; incorporates any materials that infringe or assist others to infringe on any copyright, trademark or other intellectual property rights; or contains or promotes politically sensitive or controversial issues (collectively "Restricted Content"). Member shall not permit any Restricted Content to be incorporated on Member's Site, and Adobe also reserves the right to terminate this Agreement if any Restricted Content is incorporated on Member's Site after acceptance of Member's Membership Application and the commencement of the term of this Agreement.

2.8 Additional Benefits. Adobe may offer Member additional benefits from time to time for which additional terms and conditions apply.

3. MEMBER OBLIGATIONS

3.1 Obligations. In consideration of the Benefits provided by Adobe, and to provide Member the opportunity to promote its work and participation in the Program, Member agrees to participate in certain activities, promote Adobe technology where Member is able and deems appropriate, and comply with the Member Obligations set forth in this [Section 3](#) and provide Adobe with certain Member Materials described below in [Section 4](#).

3.2. Promotional/PR Activities. Member agrees to participate in a minimum of two (2) of the following activities during the Term: (i) participate in one (1) customer success story; (ii) provide Adobe with a quote for certain Adobe marketing activities; or (iii) participate in a video testimonial.

3.3. Events and Speaking. Member agrees to participate in a minimum of one (1) of the following activities during the Term: (i) develop content for an AdobeTV episode; (ii) participate at an Adobe or Adobe-sponsored event to share work Member has completed using Adobe Products; or (iii) initiate or sponsor a speaking commitment where Member discusses work Member has completed using Adobe Products.

3.4 New Technology Adoption. Member agrees that at least once during the Term, it will promote Adobe Products with a client account and will provide anonymized metrics regarding an advertising campaign related to promotional or PR activity described in [Section 3.2](#) above.

3.5 Code of Conduct for Members. During the term, Member shall conduct its activities in an ethical manner and in a way that reflects favorably on itself and Adobe.

3.6 Feedback License. Member grants to Adobe a non-exclusive, irrevocable, worldwide, royalty-free right and license to use, reproduce, distribute, make derivative works based upon, publicly display, publicly perform, make, use, sell and export the Feedback, including without limitation the right to sublicense such rights through multiple tiers of sublicensees. Member agrees that Member has all rights necessary to provide the Feedback to Adobe and Member acknowledges that Adobe is in no way obligated to incorporate, use or otherwise acknowledge any Feedback that Member has provided. For purposes of this Agreement, "Feedback" means feedback related to the various program's made available under this Agreement and evaluation of the Products, including without limitation, feedback on features or functionality, usability, specifications, architectural diagrams, APIs and related information, software or hardware compatibility, interoperability, performance, bug reports, test results and documentation requirements, and may also include suggestions or ideas for improvements or enhancements to the Products.

4. Trademarks, Adobe Content, and Intellectual Property.

4.1 Trademarks. Subject to the terms of this Agreement, Each party grants the other a nonexclusive, nontransferable, nonassignable, nonsublicensable, revocable, limited license to use Adobe Trademarks and Member Trademarks respectively, if any, expressly authorized for use in conjunction with a Benefit, in its advertising and promotional materials during the term of this Agreement, solely in conjunction with the applicable Products and the applicable Benefit(s) and strictly in accordance with the terms of this Agreement. For purposes of this Agreement, "Adobe Trademarks" and "Member Trademarks" mean, with respect to a Benefit, the artwork, Logos, or other images provided by each party on the applicable portions of each party's sites for use in conjunction with such Benefit as specified in [Exhibit A](#). Neither party may not alter, modify, or change the trademarks in any way. Member's license to use Adobe Trademarks under this Agreement is expressly conditioned on Member's continued good standing under the Program, and Member's use of the Adobe Trademarks must be in strict accordance with Adobe's trademark usage guidelines, including the "Adobe Trademark Guidelines for third parties who license, use or refer to Adobe trademarks," at <http://www.adobe.com/misc/agreement.html> (or a successor site thereto), and the Adobe Trademarks Terms and Restrictions on Use attached hereto as [Exhibit A](#) (Adobe Trademarks Terms and Restrictions on Use), each as amended by Adobe from time to time in Adobe's sole discretion.

4.2 Adobe Content.

(i) [License](#). Subject to the terms and conditions of this Agreement, Adobe hereby grants Member a nonexclusive,

nontransferable, nonassignable, nonsublicensable, revocable, limited license to view, evaluate, and make up to five (5) print copies (provided that Member reproduces all copyright and other restricted rights notices on all visible or tangible copies) of the Adobe Content, if any, for its internal purposes only and solely in conjunction with the applicable Products and the applicable Benefit(s).

(ii) **Restrictions.** Except and unless expressly permitted in this Agreement, Member may not: reproduce, alter, enhance, modify, prepare derivative works of, display, publish, disclose, distribute, rent, sublicense, lease, sell, transfer, assign or otherwise use the Adobe Content, in whole or in part. Without limiting the foregoing, Member is expressly prohibited from placing or installing all or any portion of the Adobe Content on any electronic media (except for the one computer at Member's principal place of business to which the Adobe Content is delivered), including, but not limited to, local or wide area networks, timesharing services, multiple processing units, multiple site arrangements, service or software rental bureaus, list servers, online services, electronic bulletin boards or forums, World Wide Web sites or any other server that is Internet-enabled

4.3 Member Materials. Subject to Member's approval, Member grants to Adobe a non-exclusive, nontransferable, nonassignable, nonsublicensable, revocable, limited license to use Member's Materials in Adobe's advertising and promotional materials during the Term of this Agreement and in accordance with the terms of this Agreement. Adobe agrees to take reasonable steps to protect the Member Materials to the same extent it protects its own materials and Adobe will use the Member Materials containing quotes and writings in appropriate context. For purposes of this Agreement, "Member Materials" means any proprietary and/or copyrighted materials provided by Member to Adobe under this Agreement for use by Adobe to fulfill the Member Obligations set forth in Section 3 above.

4.4 Intellectual Property.

(i) By Adobe. All materials, including without limitation, the Products, Adobe Trademarks, Adobe Content, Prerelease Software, Confidential Information, and any associated documents, drawings, models, apparatus, sketches, designs, and lists) provided or made accessible to Member by Adobe in connection with the Program shall remain the sole and exclusive property of Adobe, its licensors and suppliers and shall be returned to Adobe promptly at Adobe's request, together with any copies thereof. Member shall abide by the terms of all applicable End User License Agreement(s) or such other agreement(s) as may be agreed to by the parties.

(ii) Member Trademarks and Member Materials provided or made accessible to Adobe by Member in connection with the Program shall remain the sole and exclusive property of Member, its licensors and suppliers and shall be returned to

Member promptly at Member's request, together with any copies thereof.

5. TERM AND TERMINATION.

5.1 Term. The term of this Agreement will commence on the date Member receives notice of Adobe's acceptance of this Agreement and continue for a term of three (3) years unless sooner terminated or revised pursuant to this Agreement ("Term"). This Agreement may be extended or renewed upon written consent of Adobe. There shall be no automatic renewal or extension of this Agreement or any Benefit provided hereunder.

5.2 Termination without Cause. Either party, in its sole discretion, may terminate this Agreement or any Benefit provided hereunder without cause or judicial intervention upon five (5) days' notice to the other party.

5.3 Termination with Cause. This Agreement may be terminated by either party: (i) immediately upon written notice if the other party makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or for reorganization under the bankruptcy laws or if a petition is filed against it, or if a receiver or trustee is appointed for such other party; (ii) upon written notice if the other party is in breach of a material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of written notice; or (iii) for any reason or no reason upon thirty (30) days prior written notice.

5.4 Termination of Rights. Upon termination or expiration of this Agreement or any Benefit, all licenses to any and all Products, Adobe Content, Prerelease Software, Confidential Information, or Adobe Trademarks licensed hereunder or in conjunction with the terminated or expired Benefit shall terminate, and all such Products, Adobe Content, Prerelease Software, Confidential Information, or Adobe Trademarks and tangible embodiments thereof shall be returned or destroyed. If Member chooses to destroy such Products, Adobe Content, Prerelease Software, Confidential Information, or Adobe Trademarks and tangible embodiments thereof, then Member shall provide Adobe with written verification of such destruction upon written request from Adobe. Upon termination or expiration of this Agreement or any Benefit provided hereunder, Member shall have no further rights or obligations, as applicable, under this Agreement or in conjunction with the terminated or expired Benefit, unless otherwise provided in this Agreement, and Member must immediately discontinue all representations that it is a Member of the Program. All licenses to Adobe for the Member Trademarks and Member Materials shall also cease and Adobe shall have no further rights or obligations, as applicable, under this Agreement unless otherwise provided in this Agreement. In no event shall expiration or termination of this Agreement require Adobe to recall any Adobe Content using the Member Trademarks or Member

Materials that are already produced and/or in the channel. The termination or expiration of any particular Benefit shall not result in the termination of this Agreement or any other Benefit in existence as of such termination date, unless expressly so provided.

5.5 Survival. Sections 4.4, 5.5, 7, 10, 11, and 12 will survive expiration or earlier termination of this Agreement for any reason.

6. MODIFICATIONS BY ADOBE. Upon thirty (30) days' notice to Member, Adobe, in its sole discretion, reserves the right to change the terms of this Agreement and any of the Benefits offered or provided hereunder from time to time, including, without limitation, ending Benefits relating to a Product should such Product be discontinued. These changes will become effective immediately at the end of such notice period and will be deemed to modify and supplement the terms of this Agreement. Such changes will govern any existing or future Benefits provided to Member hereunder. MEMBER'S CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING SUCH NOTICE WILL CONSTITUTE MEMBERS' BINDING ACCEPTANCE OF THE CHANGE. IF ANY MODIFICATION IS UNACCEPTABLE TO MEMBER, MEMBER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT WITHIN THIRTY (30) DAYS OF SUCH NOTICE. IN SUCH EVENT, MEMBERSHIP WITHIN THE PROGRAM SHALL BE CANCELLED

7. CONFIDENTIAL INFORMATION.

7.1 Definition. As used in this Agreement, "Confidential Information" means any and all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, software source documents, Personal Data and any other information marked as confidential or that Member should reasonably have known to be confidential that is made available to Member by Adobe, in its sole discretion, in connection with the Program. For purposes of this Agreement, "Personal Data" means a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number or national identification number, credit card number, bank information, or customer or account number, or any other piece of information that (a) allows the identification of a natural person, or (b) relates to financial data of a natural person.

7.2 Obligations. Member shall not make use of, disseminate, or in any way disclose Adobe's Confidential Information, except to the extent necessary for Member's performance under this Agreement and any other purpose Adobe may hereafter authorize in writing. In particular, Member shall maintain the existence, features, and capabilities of any Prerelease Software disclosed to Member as secret and confidential until the Pre-Release Software is introduced by Adobe for license to the general public or publicly announced by Adobe. Member shall treat Adobe's

Confidential Information with the same degree of care as it accords to its own confidential information but in no event with less than reasonable care. Member may disclose Adobe's Confidential Information only to those of its employees and consultants who need to know such information and who have previously agreed in writing to be bound by terms and conditions at least as protective of Adobe's Confidential Information as are the terms and conditions of this Agreement. Member shall ensure that if Adobe's Confidential Information is collected within a European country, Member shall retain all such information within such country, or for countries that are part of the European Union, within the European Union, and Member shall not transmit such information outside of such location unless Adobe authorizes otherwise in writing prior to such transmission. Further, Member shall implement the processes, procedures and mechanisms necessary to ensure against unauthorized access to the Confidential Information by third parties; and shall not transmit Confidential Information in a clear or unprotected manner through public networks.

7.3 Data Protection and Privacy. In collecting, processing, recording, storing, registering, disclosing, transferring and using (collectively, "Using") data (including Personal Data) and in maintaining records that may be provided to Adobe hereunder, Member shall comply fully with any applicable privacy protection regulations, data protection regulations and other applicable laws, and shall only do so, directly or indirectly, if required to perform its obligations under this Agreement, and in accordance with (a) applicable U.S., federal and state and international privacy and data protection laws, rules and regulations, and (b) the Adobe Online Privacy Policy (available at <http://www.adobe.com/ap/misc/privacy.html>, or any successor site thereto). Additionally, Member shall make all appropriate registrations and shall apply for all appropriate authorizations, approvals, and/or licenses so as to enable an inspection as referred to below, or the transfer of the data to Adobe and any third party(ies) designated by Adobe, and their holding and use by Adobe and any third party(ies) designated by Adobe, for any purposes specified by Adobe, and in so far as permitted under the applicable privacy protection regulations and the applicable data protection regulations. Member acknowledges and agrees that, as between Member and Adobe, the Personal Data that Member collects, processes, records, stores, transfers or receives from or on behalf of Adobe, or directly from End Users, resellers, or other persons in relation to Adobe or its products or services ("Adobe Personal Data"), shall be considered Adobe's Confidential Information. Member shall not have any rights in or to any Adobe Personal Data. Member shall comply with any information security requirements promulgated by Adobe, and will cause its personnel, consultants, service providers, dealers and agents to comply with the provisions of this section. Nothing in this section shall in any way be interpreted to limit or diminish any other obligation Member may have

elsewhere under this Agreement. Member shall ensure that it does not provide access to Confidential Information to any person who, to the best knowledge of Member, has been convicted of a felony or misdemeanor involving fraud or dishonesty.

7.4 General. Member's obligations under this Agreement with respect to a portion of Adobe's Confidential Information shall cease when (but only to the extent that) Member can document with clear and convincing evidence that: (a) it is or becomes generally available to the public through no fault or breach of Member; (b) it was in Member's possession free of any obligation of confidence at the time it was communicated to Member by Adobe; (c) it was rightfully in Member's possession free of any obligation of confidence subsequent to the time it was communicated to Member by Adobe; (d) it was developed by employees, agents, or consultants of Member independently of and without reference to any information communicated to Member by Adobe; or (e) it is required to be disclosed by any applicable law, regulation, regulatory authority or court of law. **NOTHING IN THIS SECTION 7 WILL EXTEND OR VARY THE TERMS OF ANY END USER LICENSE GRANTED TO MEMBER BY ADOBE (INCLUDING, WITHOUT LIMITATION, ANY RESTRICTIONS RELATING TO THE USE OF SOFTWARE).**

8. LIMITED WARRANTIES.

8.1 BY ADOBE. Adobe does not guarantee that every question or problem raised by Member will be resolved or that published or orally disseminated referrals to Member will be accurate or will result in additional customers. Certain technical difficulties may, from time to time, result in service interruptions. Member will not hold Adobe responsible for the consequences of such interruptions. Nothing in this Agreement shall be construed as expanding or adding to any warranty for any Product licensed under an End User License Agreement. EXCEPT FOR THE FOREGOING EXPRESS LIMITED WARRANTY, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ADOBE MAKES, AND MEMBER RECEIVES, NO WARRANTIES, TERMS, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE BY ANY COUNTRY OR JURISDICTION, RELATED TO OR ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE PROVISION OF BENEFITS, PRODUCTS OR SERVICES UNDER THIS AGREEMENT. ADOBE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY, TERM, REPRESENTATION OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, AND NON-INFRINGEMENT. NOTWITHSTANDING THE FOREGOING, MEMBER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMER CONTAINED IN EXHIBIT B (ADOBE PRE-RELEASE SOFTWARE), NOT THIS WARRANTY PROVISION, GOVERNS THE PRE-RELEASE SOFTWARE.

8.2 By Member. Member represents and warrants that (i) it is the sole owner or a licensor of the Member Trademarks, as defined in Section 4.1 above; (ii) it has received all consents, model releases, and permissions from any person pictured in the any materials provided to Adobe for use hereunder ("Member Materials") and has all rights necessary to grant the licenses herein to Adobe; (iii) it has not entered into any agreements that would prevent it from granting the rights to Adobe provided in this Agreement; (iv) the Member Trademarks and Member Materials do not contain any material that (a) violates any privacy or publicity rights, trademark rights, or copyright of any person, company or entity, or (b) is obscene, defamatory, or otherwise unlawful.

9. NO OTHER WARRANTIES. Neither Member, nor any of its employees or agents, has any right to make any representation, warranty, or promise to any third party on behalf of Adobe that is not (a) explicitly stated in an applicable End User License Agreement, Product label or container or (b) specifically authorized in writing by Adobe.

10. INDEMNITY. Member will be solely responsible for and will defend, indemnify and hold Adobe and Adobe's officers, directors, agents, employees and representatives harmless from and against any and all claims, suits, damages, losses, liabilities, obligations, penalties and expenses, including legal fees and expenses, relating to or based on any claims: (a) of negligence, misrepresentation, or error or omission on the part of Member or agents, consultants or other representatives of Member; and (b) based upon any warranty, term, condition or representation made by Member or Member's employees or agents that differ from the warranty provided by Adobe in any applicable End User License Agreement, Product label or container unless Member has obtained Adobe's prior written specific authorization otherwise; and (c) by any person whose Personal Data is Used (as defined in Section 7) by Member, or (d) by any party enforcing privacy or data protection regulations, or any other applicable laws, or based on violation of privacy and/or protection regulations, or any other applicable laws or breach of the data protection obligations of Section 7, in connection with the data Used by Member or in connection with the use by Adobe or any other party(ies) designated by Adobe of such data. Member's indemnification obligation shall survive the expiration or termination of this Agreement.

11. LIMITATION OF LIABILITY.

11.1 EXCEPT FOR A BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7, MEMBER'S BREACH OF ITS OBLIGATIONS UNDER THE PRERELEASE AGREEMENT, AND SUBJECT TO SECTION 11.2, NEITHER PARTY BE LIABLE TO THE OTHER PARTY, OR ANY THIRD PARTY, FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES

ARISING OUT OF OR RELATING TO THIS AGREEMENT EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR (i) LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF DATA OR LOSS OF ANTICIPATED SAVINGS, OR (ii) FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES OR LOSS ARISING OUT OF THIS AGREEMENT OR THE USE OR THE INABILITY TO USE ANY PRODUCT(S) OR BENEFIT(S).

11.2 WHERE THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE REPUBLIC OF IRELAND PURSUANT TO SECTION 12.2, NOTHING IN THIS AGREEMENT SHALL LIMIT ADOBE'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

12. MISCELLANEOUS.

12.1 Attorneys' Fees. If an action is commenced to enforce either party's rights under this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and attorneys' fees.

12.2 Governing Law. If Member is a resident of the United States, Canada or Mexico, this Agreement shall be governed by and interpreted in all respects by the laws of the State of California, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. If Member is a resident of Japan, this Agreement shall be governed by and interpreted in all respects by the laws of Japan, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within Japan between Japanese residents. If Member is a resident of the People's Republic of China or Singapore, this Agreement shall be governed by and interpreted in all respects by the laws of Singapore, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within Singapore between Singapore residents. If Member is a resident of any other country, this Agreement shall be governed by and interpreted in all respects by the laws of the Republic of Ireland, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within the Republic of Ireland between residents of the Republic of Ireland. In any event, this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

12.3 Forum. If Member is a resident of the United States, Canada or Mexico, all disputes arising under this Agreement will be brought in Superior Court of the State of California or the Federal District Court of San Jose in Santa Clara County, as permitted by law. If Member is a resident of Japan, all

disputes arising under this Agreement will be brought in Tokyo District Court in Japan. If Member is a resident of the People's Republic of China or Singapore, all disputes arising under this Agreement will be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference to this Section. The tribunal shall consist of one (1) arbitrator jointly selected by both parties. If the parties cannot agree on the choice of arbitrator within thirty (30) calendar days after notice of the dispute by either party, such arbitrator shall be appointed by the Chairman of the Singapore International Arbitration Centre. The arbitration will be conducted in the English language, provided that any witness whose native language is not English may give testimony in his or her native language, with simultaneous translation into English (at the expense of the party presenting any such witness). Judgment upon the award rendered may be entered and shall be enforceable in any court of competent jurisdiction having jurisdiction over the parties. If Member is a resident of any other country, all disputes arising under this Agreement will be brought in the Courts of Ireland in Dublin, Ireland.

12.4 Severability. If any provision of this Agreement is unenforceable or invalid under any law or be so held by applicable court or arbitrator's decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable invalid provision within the limits of applicable law of applicable court decisions.

12.5 Notice. Any notices required or permitted to be given pursuant to this Agreement shall be in writing, sent via email, certified mail, return receipt requested, postage pre-paid, or delivered by hand, to the business or email addresses of the parties set forth in the Membership Application or to such other address as may be furnished in writing to the other party. Notices shall be deemed effective on the earlier of the date of receipt or the fourth day after deposited in the mail. If notice is sent to Adobe, it shall be sent to the attention of the General Counsel. In addition, Member will refer to Adobe sites specified herein from time to time during the term of this Agreement to ensure its continued compliance with the terms of this Agreement, including without limitation, the Adobe sites specified herein.

12.6 No Agency. Nothing contained herein, including without limitation the title of this Agreement, shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties, and neither party has the authority to bind or incur any obligation on behalf of the other.

12.7 Verification. Adobe or its third party designee may, at Adobe's request, perform verifications of Member's environment to ensure compliance with the relevant terms of this Agreement. Such reviews may include, without limitation, interviews of relevant personnel, review of documentation, and technical inspection of systems. Adobe shall provide advance written notice of such audit to Member. Member shall provide all access, information and assistance as is reasonably requested by Adobe in connection with any such verification. Member shall comply with all reasonable recommendations that result from such audits as soon as practicable.

12.8 Complete Agreement. Any Exhibit and Appendix attached hereto is incorporated by this reference and made a part of this Agreement as if its terms were fully set forth in the body of this Agreement. This Agreement, including all such Exhibits and Appendices, constitutes the entire agreement between Adobe and Member and supersedes and terminates any and all prior agreements or contracts, written or oral, entered into between the parties relating to the subject matter hereof. In the event of any inconsistency between this Agreement and the provisions in any Membership Application, the terms of this Agreement shall govern. In addition, if there is any inconsistency between this Agreement and the Appendix(ices), for the Appendices the terms of the Appendix(ices) shall govern. Subject to Section 6, and except as expressly provided herein, this Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Adobe and Member by their duly authorized representatives. Any additional services, Products or Benefits added to this Agreement by notice from Adobe will be governed by the terms of this Agreement. EACH PARTY AGREES THAT IT HAS ONLY RELIED UPON THE REPRESENTATIONS EXPRESSLY SET OUT IN THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE FOR ANY REPRESENTATION MADE PRIOR TO ENTERING INTO THIS AGREEMENT EXCEPT AS EXPRESSLY SET FORTH OTHERWISE HEREIN, UNLESS SUCH REPRESENTATION IS FRAUDULENTLY MADE.

12.9 Waiver. The waiver by a party of a breach of any provisions contained herein shall be deemed effective only when in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself.

12.10 Remedies. The parties expressly agree that a violation of Section 7, or Exhibit B (Adobe Pre-Release Software) of this Agreement may cause irreparable harm to Adobe and that a remedy at law is likely to be inadequate. Therefore, in addition to any and all remedies available at law, Adobe will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation or any or all of the provisions hereof. Member hereby waives any requirement that Adobe post a bond or other security in conjunction with any application for injunctive or other equitable relief.

12.11 Assignment; Name Change. This Agreement may not be assigned, in whole or in part, by Member without the prior written approval of Adobe. Should Member undergo a change of control, Adobe will be entitled to terminate this Agreement immediately on written notice to Member. For the purposes of this Section 12.11, a change in the persons or entities who control fifty percent (50%) or more of the equity securities of Member shall be considered a change of control. Adobe's rights and obligations, in whole or in part, under this Agreement may be assigned by Adobe. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Adobe will have the right to terminate this Agreement in case of any attempted assignment or transfer in contravention of this provision, and any such attempt will be null and void. In addition, if Member changes its corporate name or structure, Member shall notify Adobe in writing at least ten (10) days prior to such change taking effect.

12.12 Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement that might be due, in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of any nature beyond the reasonable control of such party, including, without in any way limiting the generality of the foregoing, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, including phone, Internet or other communications systems, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, insurrection, riot, act of God or the public enemy, law, act, order, export control regulations, proclamation, decree, regulations, ordinance, or instructions of Government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement).

12.13 Warranty. MEMBER WARRANTS THAT IT HAS FULL POWER AND AUTHORITY TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT AND THAT THE PERSON SIGNING THIS AGREEMENT ON MEMBER'S BEHALF HAS BEEN DULY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT. MEMBER WARRANTS THAT THIS AGREEMENT IS NOT LIMITED OR RESTRICTED BY, AND IS NOT IN CONFLICT WITH, ANY COMMERCIAL ARRANGEMENT, OBLIGATION, CONTRACT, AGREEMENT OR OTHER INSTRUMENT TO WHICH MEMBER IS BOUND OR SUBJECT. MEMBER FURTHER WARRANTS THAT IT SHALL COMPLY WITH ALL END USER LICENSE AGREEMENTS AND HAS SATISFIED AND FULFILLED ANY BENEFIT PREREQUISITE THAT MAY BE REQUIRED AS PROVIDED HEREUNDER.

12.14 Export Control. Member will not export, directly or indirectly, any technical data or software product acquired from Adobe pursuant to this Agreement or any Product utilizing any such data or software product to any

country for which the U.S. Government or the government of a Member State of the European Union or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval. Member shall be solely responsible for obtaining, and maintaining in full force and effect, all licenses, permits and authorizations required under any such Member to perform its obligations under this Agreement.

12.15 Compliance with Laws; Foreign Corrupt Practices Act. Member will comply with all applicable laws including, if appropriate and applicable, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, 60-250 and 60-741. The affirmative action clause and regulations contained in the above shall be incorporated by reference in this Agreement. Without limiting the generality of this section, Member hereby acknowledges and agrees that certain laws of the United States, including the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 et. seq., as amended, prohibit any person subject to the jurisdiction of the United States from making any payment of money or anything of value, directly or indirectly, to any foreign government official, foreign political party or candidate for foreign political office for the purpose of (a) influencing any act or decision of such official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or (b) inducing such official, political party, party official, or candidate to use his or its influence with the government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist Member in obtaining or retaining business for or with, or directing business to any third party. Member hereby represents and warrants that Member, its owners, directors, and employees, are not officials or representatives of any government-owned or government-controlled entity or political party or official

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thereof, or political candidate. In addition, Member hereby represents and warrants that, in the performance of its obligations hereunder, Member has not made, and will not make, any such proscribed payment. Member further agrees that if subsequent developments cause the representations made herein to be no longer accurate or complete, Member will immediately so advise Adobe.

12.16 Publicity. Member consents to publication of its name by Adobe as a Member of the Program or any applicable component thereof.

12.17 Third Party Beneficiaries. Member acknowledges and agrees that Adobe's licensors are third party beneficiaries of this Agreement, with the right to enforce the obligations set forth in this Agreement.

12.18 Independent Investigation. MEMBER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO CONSULT WITH ITS OWN LEGAL ADVISERS IF IT SO DESIRED, AND AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IN INTERPRETING THIS AGREEMENT, NO WEIGHT SHALL BE PLACED UPON THE FACT THAT THIS AGREEMENT HAS BEEN DRAFTED BY ADOBE. MEMBER UNDERSTANDS THAT ADOBE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) PROVIDE BENEFITS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE A BUSINESS THAT IS SIMILAR TO OR COMPETES WITH MEMBER'S BUSINESS. MEMBER IS ALSO AWARE THAT ADOBE RESERVES THE RIGHT TO OFFER SEPARATE AND DIFFERENT PROMOTIONAL AND/OR INCENTIVE ARRANGEMENTS TO ITS SUPPLIERS, KEY CUSTOMERS AND OTHER THIRD PARTIES. MEMBER HAS INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND IS NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

EXHIBIT A

ADOBE TRADEMARKS TERMS AND RESTRICTIONS ON USE

In connection with Member's participation in the Program, Member and Adobe agree as follows:

1. Member acknowledges that, except for the license expressly granted in this Agreement, Member has not acquired and will not acquire any right, interest or title to the Adobe Trademarks by reason of this Agreement or through the exercise of any rights in the Adobe Trademarks granted to Member hereunder. Member further acknowledges that all proprietary rights in the Adobe Trademarks and the goodwill associated therewith are solely owned by and belong to Adobe, and that all additional goodwill associated with the Adobe Trademarks created through their use by Member will inure to Adobe's sole benefit. As between Member and Adobe, Adobe will be considered the creator of the Adobe Trademarks, and all rights in the Adobe Trademarks will be Adobe's property. In addition, Member hereby grants, assigns and conveys to Adobe any and all rights Member may now have or may be deemed to have in the future with respect to the Adobe Trademarks or any portion of them. At Adobe's request and reasonable cost, Member shall execute all documents as are necessary to vest such rights in Adobe. Member will not register or attempt to register any brand, names, marks, or other elements of the Adobe Trademarks as a trademark, service mark, Internet domain name, trade name, or any similar trademarks or name, with any domestic or foreign governmental or quasi-governmental authority which would be likely to cause confusion with any of the Adobe Trademarks. Member will not to commit any act that would cause any of the Adobe Trademarks to vest in the public domain in any jurisdiction. Other than as set forth in this Agreement, Member shall make no use of the Adobe Trademarks or of any designation confusingly similar to any of the Adobe Trademarks without Adobe's prior written consent.

2. Member further agrees that Member will not have the right to, and Member will not, (a) use any method other than that authorized in writing by Adobe for the purpose of identifying Member as a member of the Program or establishing a link from Member's Site to Adobe's; (b) use the Adobe Trademarks in any manner that suggests an endorsement or validation of any product or service of a company other than Adobe, except as expressly permitted by this Agreement; (c) use the Adobe Trademarks in connection or association with any matter that is unsuitable for or incompatible with the Program or in connection or association with any matter relating to any Restricted Content as that term is defined in Section 2.10 of this Agreement; or (d) use the Adobe Trademarks or any other names, marks, symbols, copyrights, logos, fanciful or other characters, designs, representations, figures, drawings, photographs, ideas or other proprietary designations or properties owned, developed, licensed or

created by Adobe, except as expressly permitted by this Agreement.

3. Upon reasonable request from Adobe, Member will notify Adobe of the locations of Member's use of the Adobe Trademarks and promptly provide Adobe with suitable specimens of materials created by or for Member that use any of the Adobe Trademarks. Adobe shall be entitled to review Member's use of the Adobe Trademarks periodically to evaluate Member's compliance with Adobe's quality standards. If Adobe so requests, Member will submit to Adobe any uses of the Adobe Trademarks for Adobe's approval prior to the dissemination of the materials, such approval not to be unreasonably withheld. If at any time Adobe determines that Member is not maintaining adequate quality standards, Member shall be considered in breach of this Agreement and subject to the termination provisions of Section 5.3 of Exhibit A. Member shall remedy any material deficiencies in its use of the Adobe Trademarks and/or quality of Member's services or products provided in conjunction with the Adobe Trademarks, as determined by Adobe in its sole discretion and upon reasonable notice from Adobe, as soon as reasonably possible but in any event not later than ten (10) days following notice from Adobe.

4. Member will use the Adobe Trademarks only in connection with services or products that: (a) meet or exceed all applicable (U.S. and non-U.S.) laws and regulations; (b) are advertised in compliance with all applicable (U.S. and non-U.S.) fair advertising laws and regulations; (c) comply with all other applicable (U.S. and non-U.S.) laws and regulations; (d) are of a quality and reputation consistent with the high quality of Adobe products and services; and (e) are advertised in a manner consistent with industry standards. Member shall mark every use of the Adobe Trademarks with the proper trademark notices set forth in the applicable list of Adobe trademarks currently located at "Permissions and trademark guidelines" pages of Adobe's official web site at <http://www.adobe.com/misc/agreement.html>, or a successor site thereto. Member shall ensure that the appropriate trademark symbol(s) will appear in superscript whenever the Adobe Trademarks are included in any advertisement, brochure, or other material created or circulated by or for Member. Member shall display the following acknowledgment of trademark ownership on any advertising, promotional or other materials created or circulated by or for Member that include the Adobe Trademarks: [List of Adobe Trademarks used, beginning with "Adobe" and "the Adobe logo," if used, followed by other Adobe Trademarks in alphabetical order] are either

registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries. Member's use of the Adobe Trademarks shall comply at all times with this Agreement, the "Adobe Trademark Guidelines for third parties who license, use or refer to Adobe trademarks," currently located at the "Permissions and trademark guidelines" pages of Adobe's official web site at <http://www.adobe.com/misc/agreement.html>, or a successor site thereto, and any specific Logo usage guidelines provided by Adobe for the Program. Member shall employ its best efforts to use the Adobe Trademarks in a manner that does not derogate from Adobe's exclusive and valuable rights in the Adobe Trademarks and shall take no action that will interfere with or diminish Adobe's rights in the Adobe Trademarks.

5. Member shall promptly report to Adobe if Member becomes aware of (a) any infringement of Adobe's intellectual property rights relating to the Adobe Trademarks by any third party, (b) any infringement by any third party of any right granted under this Agreement and (c) any unauthorized copying or distribution of the Adobe Trademarks or any component thereof by any third party.

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EXHIBIT B
ADOBE SYSTEMS INCORPORATED
LICENSE AGREEMENT FOR PRERELEASE SOFTWARE
(PROVIDED FOR SAMPLE PURPOSES ONLY)

This Serial Agreement for Prerelease Software (the “**Agreement**”) is entered into by Adobe (as defined below) and the Recipient, as identified below. The “**Effective Date**” of this Agreement will be the date Recipient selects ‘I Agree’. Adobe and Recipient agree as follows:

IMPORTANT: THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN RECIPIENT AND ADOBE. PLEASE READ IT CAREFULLY BEFORE ACCESSING, DOWNLOADING, INSTALLING AND/OR OTHERWISE USING THE SOFTWARE AND/OR CONFIDENTIAL INFORMATION. THIS AGREEMENT PROVIDES RESTRICTIONS AND OBLIGATIONS WITH RESPECT TO THE SOFTWARE AND OTHER CONFIDENTIAL INFORMATION. IN ADDITION, THIS AGREEMENT PROVIDES A LIMITED LICENSE TO USE THE SOFTWARE AND/OR CONFIDENTIAL INFORMATION AS SET FORTH HEREIN AND CONTAINS WARRANTY AND LIABILITY DISCLAIMERS. BY DOWNLOADING, INSTALLING AND/OR OTHERWISE USING THE SOFTWARE AND/OR CONFIDENTIAL INFORMATION, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS, ACKNOWLEDGING YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS, RESTRICTIONS, AND CONDITIONS SET FORTH IN THIS AGREEMENT.

BY SUBMITTING PERSONAL INFORMATION THROUGH THIS AGREEMENT, LICENSEE UNDERSTANDS AND AGREES THAT THIS INFORMATION MAY BE TRANSFERRED ACROSS NATIONAL BOUNDARIES AND MAY BE STORED AND PROCESSED BY ADOBE AND ITS AGENTS IN ANY OF THE COUNTRIES IN WHICH ADOBE MAINTAINS OFFICES, INCLUDING THE UNITED STATES.

IF LICENSEE DOES NOT AGREE TO BE BOUND BY EACH OF THE TERMS, RESTRICTIONS AND CONDITIONS HEREIN, THEN LICENSEE IS INELIGIBLE TO PARTICIPATE IN THE ADOBE PRERELEASE PROGRAM.

Adobe is in the business of developing, marketing, distributing and providing software, services and other technology around the world. Licensee desires to evaluate prerelease versions of Adobe software and technology. Adobe believes that Licensee's evaluation of, and feedback about, Adobe's prerelease software and technology would be useful for the further development and refinement of such software and technology. Adobe and Licensee agree as follows:

1. **Definitions.**

1.1 “**Confidential Information**” means the Prerelease Software, any related information supplied to Licensee by Adobe hereunder, and any Evaluation Feedback. “Confidential Information” whether in written, verbal, graphic or electronic form, including without limitation, (a) the Prerelease Software's existence, features and functionality, fonts, user interface details (including screen shots), capabilities, specifications, architectural diagrams, APIs and related information, serial numbers, login identifiers, passwords, Adobe development and shipping schedules, Adobe email lists, bug databases, know how, trade secrets, and source code; (b) any Evaluation Feedback regarding the same; (c) discussions of potential features, product changes and Evaluation Feedback and opinions stemming therefrom, including the existence of any business discussions, negotiations or agreements in progress between Adobe and Licensee; (d) opinions stemming from the customer advisory boards organized by Adobe; and (e) the terms and conditions of this Agreement.

1.2 “**Evaluation Feedback**” means feedback on evaluation of the Prerelease Software, including without limitation, feedback on features or functionality, usability, specifications, architectural diagrams, APIs and related information, software or hardware compatibility, interoperability, performance, bug reports, test results and documentation requirements, and may also include suggestions or ideas for improvements or enhancements to the Prerelease Software.

1.3 “**Hosted Services**” means an instance of the Prerelease Software made accessible to Licensee by Adobe (or by a third party host on Adobe's behalf) through the Internet or another network connection for use as governed by this Agreement.

1.4 “**Prerelease Software**” means prerelease versions of the software, including Hosted Services, and related materials and information as determined by Adobe in its sole discretion including any development tools, documentation, support materials, corrections and/or updates supplied by Adobe to Licensee hereunder.

1.5 “**Licensee Content**” means any content that Licensee uploads, posts, and/or emails, including but not limited to, information, data, documents, communications, files, text, images, photographs, graphics, videos, webcasts, tools, resources, software and products that Licensee transmits or otherwise makes available as part of Licensee's testing of the Hosted Services. For the avoidance of doubt, test results provided by Licensee to Adobe regarding the Hosted Service is excluded from this definition and is subject to the Evaluation Feedback provision in the Agreement.

1.6 **“Testing Period”** means the time from Licensee’s receipt of the Prerelease Software until the earlier of thirty (30) days after the first commercial release of the Prerelease Software or Licensee’s purchase of a commercial license of the Prerelease Software.

2. **License Terms.**

2.1 **Evaluation License.** Subject to the terms of this Agreement, Adobe hereby grants Licensee a limited, nonexclusive, non-transferable and royalty-free license to install and use the Prerelease Software during the Testing Period in a test environment on computers located on Licensee’s premises solely for the purpose of internal evaluation of the Prerelease Software and supplying Evaluation Feedback to Adobe. Licensee’s access to the Prerelease Software for the limited purpose described herein does not include the right or license to make any productive or commercial use of the Prerelease Software.

2.2 **Hosted Services.** If Adobe has granted Licensee a license to test the software as a Hosted Service, as described in this Agreement, Licensee acknowledges that use of the Prerelease Software as a Hosted Service requires the exchange of information (e.g., electronic documents, data and user information possibly including personal information) over the Internet or another network and the storage of information with the Hosted Service, and Licensee specifically grants Adobe the right to use such information in connection with Licensee’s evaluation of the Prerelease Software. Licensee further acknowledges that Adobe may collect information on Licensee’s usage of the Hosted Service and may use such information to modify, improve, or enhance the Prerelease Software or Licensee’s ability to access and use the Hosted Service. The terms in this Section 2.2 shall apply to information received by Adobe both directly from the Licensee and by a third party Hosting Service Provider (“HSP”) that acts on Adobe’s behalf for purposes of operating the Hosted Application. HSP may use Licensee’s information and share it with Adobe for purposes as set forth in this Section 2.2. Notwithstanding the previous sentence, HSP shall have sole responsibility for any and all Personal Information provided by Licensee, and Adobe shall have no responsibility with respect to such Personal Information. “Personal Information” is hereby defined as name, address, phone number, e-mail address, IP address, or any other personally identifying information of the Licensee.

2.3 **Proprietary Rights.** Except as expressly set forth in this Agreement, Licensee acquires no other licenses under any intellectual property or other proprietary rights of Adobe. Licensee agrees not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Prerelease Software.

2.4 **Email Lists.** Licensee agrees not to (a) solicit or otherwise email other Prerelease Software evaluators on any mail list used by Adobe to communicate information regarding Prerelease Software evaluation or (b) disclose such mail list to any party.

2.5 **Auto Subscription to Forum.** Upon accessing a prerelease program, you agree to be automatically subscribed to that program’s forum. The forum will convey information related to the program only. You may unsubscribe at any time.

2.6 **Specific Limitations on Adobe Clean.** The Adobe Clean font, if included with the Prerelease Software, is available only for purposes of operation of the Prerelease Software user interface and not for inclusion within any output files. Adobe Clean is not licensed for any use outside of the Prerelease Software. Licensee agrees that it will not copy, move, activate or use, or allow any font management tool to copy, move, activate or use, Adobe Clean in or with any software application, program, or file other than the Prerelease Software.

3. **Evaluation Feedback.** Licensee agrees to provide reasonable Evaluation Feedback to Adobe. Licensee grants to Adobe a non-exclusive, irrevocable, worldwide, royalty-free right and license to use, reproduce, distribute, make derivative works based upon, publicly display, publicly perform, make, use, sell and export the Evaluation Feedback, including without limitation the right to sublicense such rights through multiple tiers of sublicensees. Licensee agrees that Licensee has all rights necessary to provide the Evaluation Feedback to Adobe and Licensee acknowledges that Adobe is in no way obligated to incorporate, use or otherwise acknowledge any Evaluation Feedback that Licensee has provided.

4. **Use of Hosted Services.** Licensee agrees that while Adobe may store Licensee Content, Adobe has no obligation to store such Licensee Content, except to the extent necessary for Adobe to perform the applicable prerelease program for the Hosted Service. In addition, Adobe has no responsibility or liability for the deletion or accuracy of the Licensee Content, including the failure to store, transmit, or receive transmission of the Licensee Content (whether or not processed by the Hosted Service), or the security, privacy, storage, or transmission of other communications originating with or involving use of the Hosted Service. Adobe retains the right to create reasonable limits on the storage of the Licensee Content, including limits on file size, storage space, processing capacity, and similar limitations described in the web pages accompanying the Hosted Service and as otherwise determined by Adobe in its sole discretion.

5. **Investigation.**

5.1 **Monitoring Hosted Services and Licensee Content.** Adobe, in its sole discretion, may (but has no obligation to) monitor or review the Hosted Services and Licensee Content at any time. Without limiting the foregoing, Adobe shall have the right, in its sole discretion, to remove any of the Licensee Content if it violates the terms of this Agreement, any law, or is otherwise objectionable.

5.2 **Monitoring User Activity.** Although Adobe does not generally monitor user activity occurring in connection with the Hosted Services, if Adobe becomes aware of any possible violations by Licensee of any provision of this Agreement, Adobe reserves the right to investigate such violations, and Adobe may, at its sole discretion, terminate immediately your license to access and use the Hosted Services, or change, alter or remove the Licensee Content, in whole or in part, without prior notice to Licensee. If, as a result of such investigation, Adobe believes that criminal activity has occurred, Adobe reserves the right to refer the matter to, and to cooperate with, any and all applicable law enforcement authorities. Adobe is entitled, except to the extent prohibited by applicable Law, to disclose any information, including Licensee Content, in Adobe's possession in connection with Licensee's use of the Hosted Services to (i) comply with applicable Law, legal process or governmental request, (ii) enforce the Terms, (iii) respond to any claims that Licensee's Content violates the rights of third parties, (iv) respond to Licensee's requests for customer services, or (v) protect the rights, property or personal safety of Adobe, its users or the public, and law enforcement or other government officials, as Adobe in its sole discretion believes to be necessary or appropriate.

6. Confidential Information.

6.1 **Non-Disclosure.** Licensee agrees to hold the Confidential Information in strict confidence and not disclose it to any other party; provided, however, that Licensee may disclose Confidential Information to employees of Licensee (a) with a need to know such Confidential Information and (b) that have each signed a written agreement with Licensee containing confidentiality obligations consistent with those set forth in this Agreement. Licensee will treat Confidential Information with the same degree of care as it accords to its own confidential information, but in no event with less than reasonable care. Licensee's obligations under this Section shall terminate with respect to the Prerelease Software upon the first generally available commercial release of the Prerelease Software.

6.2 **Provision for Authors.** If Licensee is authoring any written work related to the Prerelease Software, Licensee may disclose and discuss Confidential Information with the publisher of the written work but only as necessary to facilitate and complete work on the book, article or other planned publication that makes use of, or includes Confidential Information, PROVIDED THAT said publisher has entered into a non-disclosure agreement directly with Adobe that identifies the written work and the Confidential Information.

6.3 **Serial Numbers, Login Identifiers, and Passwords.** Serial numbers, login identifiers and passwords issued to Licensee (or its employees) are intended for use by the designated individual and shall not be shared with other individuals even if employed by Licensee.

6.4 **Access to Bug Databases.** Licensee's access to Adobe's bug database is intended for use by the Licensee solely to provide feedback to Adobe and shall not be accessed by anyone other than Licensee. Licensee acknowledges that all information contained in the Adobe's bug database is Confidential and that any resolution of reported bugs by Licensee will be at Adobe's sole discretion. Licensee also agrees that Licensee will not post any third party confidential information to the bug database.

6.5 **Standard of Care.** Licensee will treat the Confidential Information with the same degree of care as it accords its own confidential information, but in no event, with less than commercially reasonable care.

7. **No Warranty.** Licensee is aware that the Prerelease Software is a prerelease version and may be prone to bugs and/or stability issues. Adobe provides the Prerelease Software to Licensee "AS IS," and Adobe disclaims any warranty or liability obligations to Licensee of any kind. ADOBE MAKES NO EXPRESS, IMPLIED, OR STATUTORY WARRANTY OF ANY KIND WITH RESPECT TO THE PRERELEASE SOFTWARE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY WITH REGARD TO PERFORMANCE, MERCHANTABILITY, SATISFACTORY QUALITY, SECURITY OR PRIVACY OF INFORMATION TRANSMITTED TO AND FROM THE HOSTED APPLICATION, AVAILABILITY OF THE HOSTED APPLICATION, NONINFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT WILL ADOBE BE LIABLE TO LICENSEE OR ANY OTHER PARTY FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF ADOBE OR ANY COMPANY REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE BEARS THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PRERELEASE SOFTWARE. The foregoing exclusions and limitations shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

8. **Return of Prerelease Software.** Adobe shall retain all right, title and interest in all Prerelease Software and any associated documents and Confidential Information. Licensee shall return the Prerelease Software and Materials to Adobe promptly at Adobe's request, together with any copies thereof. Licensee agrees to destroy all versions of such Prerelease

Software and Confidential Information no later than thirty (30) days after Adobe's first commercial shipment of the commercially released version, or at Adobe's written request. Adobe will destroy all Licensee Content at the end of the prerelease program.

9. **Export Restrictions.** Licensee acknowledges that the Prerelease Software licensed hereunder is subject to the export control laws and regulations of the U.S.A. and other countries. Licensee agrees that it will not export or re-export the Prerelease Software, any part thereof, or any process or service that is the direct product of the Prerelease Software to any country, person or entity subject to U.S. export restrictions.

10. **Term and Termination.** This Agreement shall commence upon the Effective Date and continue unless terminated as set forth in this Section. Each party may terminate this Agreement without cause upon fifteen (15) days prior written notice to the other party. Finally, Adobe may terminate this Agreement immediately upon written notice if Licensee fails to comply with any term of this Agreement. Licensee agrees to destroy all Prerelease Software and Confidential Information immediately upon termination of this Agreement for any reason. Sections 1, 2, 3, 6, 8, 10, 11 and 12 shall survive any termination or expiration of this Agreement.

11. **Notice.** All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery to the appropriate address, upon acknowledgment of receipt of electronic transmission, or if sent by certified or registered mail, three (3) days after the date of mailing. If notice is sent to Adobe, it shall be sent to the attention of the General Counsel at Adobe Systems Incorporated, 345 Park Ave, San Jose, CA 95110, USA.

12. **General.** This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of California. The respective state or federal courts located in Santa Clara County, California shall have non-exclusive jurisdiction over all disputes relating to this Agreement. Licensee also agrees that the Prerelease Software will not be rented, leased, sold, sublicensed, assigned or otherwise transferred. Licensee will not assign or transfer any rights or obligations under this Agreement without the prior written consent of Adobe and any such attempted assignment or transfer will be null and void. This Agreement may only be modified by a writing signed by both parties. This Agreement (along with accompanying Addenda and Exhibits) is the entire agreement between Adobe and Licensee concerning the Prerelease Software and related Confidential Information (unless a separate non-disclosure agreement governs disclosure of such Confidential Information). It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter.