



Master Agreement ID:

## SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

This Software as a Service Subscription Agreement, including the Order Form and SOW (collectively the “Agreement”) is entered into by either or both (i) Adobe Inc., a Delaware corporation having its principal place of business at 345 Park Avenue, San Jose, CA 95110 and/or (ii) Adobe Systems Software Ireland, an Irish corporation with offices located at 4-6 Riverwalk, City West Business Campus, Dublin 24, Ireland and their Affiliates (collectively “Adobe”), and \_\_\_\_\_ a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ (“Provider”) on \_\_\_\_\_ (“Effective Date”).

### 1. Definitions

- 1.1 “**Adobe Information**” means all electronic data or information that may include Adobe’s Confidential Information that is stored or processed on Provider’s server.
- 1.2 “**Affiliate**” means, for a Party, any other entity that controls, is controlled by, or under common control with, the Party. For the purposes of this definition, the term “control” means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.
- 1.3 “**Authorized Users**” means Adobe’s and its Affiliate’s employees and individual contractors (i.e., temporary employees), or anyone authorized by Adobe to use the Software.
- 1.4 “**Confidential Information**” means all non-public information disclosed by either party, except information that is: (i) already known to a Recipient prior to disclosure, (ii) publicly known through no wrongful act or omission of Recipient, (iii) received by Recipient from a third party without violating any law or contractual obligation; (iv) independently developed by the Recipient, or (v) approved in writing for release by Discloser prior to disclosure..
- 1.5 “**Documentation**” means any information published by Provider including reference material, help documentation and product information on Provider’s website, relating to the use of the Software.
- 1.6 “**Order Form(s)**” means the document that describes the Software that is being ordered by Adobe, including fees and number of Authorized Users.
- 1.7 “**Personnel**” means individuals supplied by Provider to perform the Professional Services.
- 1.8 “**Principal Place of Business**” means the location where Provider is headquartered, as identified in the preamble above.
- 1.9 “**Professional Services**” means any services required for Adobe to implement and use the Software as detailed in the SOW attached as Exhibit C, or a future SOW to this Agreement, which may include, configuration, implementation, customization, consulting, and training.
- 1.10 “**Software**” means Provider’s software-as-a-service products, including Documentation, as described more fully in one or more Order Form(s) along with any releases, updates, or upgrades, licensed to Adobe under the terms of this Agreement.
- 1.11 “**SOW**” means a project-specific statement of work containing, at a minimum, the information requested in the SOW form attached as Exhibit C, including a description of the Professional Services to be performed, the Personnel, and all other necessary details associated with the Professional Services.
- 1.12 “**Support**” means the maintenance and support services listed in the Technical Support, Maintenance, and Service Level Agreement attached as Exhibit B.
- 1.13 “**Tax(es)**” means any tax, fee, or cost not based on Adobe’s net income or capital, including without limitation any sales, excise, value added, use, customs, tariffs, imports, government proposed surcharges, withholding, social security, unemployment, and similar taxes and any fees, penalties, or interest associated with any of the foregoing.

### 2. Terms of Use



Master Agreement ID:

- 2.1 Subject to the payment of fees set forth in the Order Form, Provider grants Adobe and Adobe's Authorized Users a non-exclusive, non-transferable, royalty-free, license during the Term to access and use the Software listed on the Order Form.
  - 2.2 Use of the Software will include Adobe's right to; where applicable, access and use any of Provider's application programming interfaces for the purpose of accessing and using the Software.
- 3. Professional Services.** If Provider performs Professional Services, the following additional terms will apply:
- 3.1 Provider will perform the Professional Services described in and in accordance with the schedule and delivery requirements set forth in the SOW.
  - 3.2 If on-site at Adobe, Provider will take all necessary precautions to prevent injury to any persons (including employees and other agents of Adobe) or damage to property (including Adobe's property).
  - 3.3 If Adobe notifies Provider that any Personnel, as determined in Adobe's sole discretion, does not have the requisite knowledge or skill to perform the Professional Services, or has violated any of Adobe's safety or security requirements, Provider will immediately remove and replace the offending Personnel.
  - 3.4 For instances where Adobe requests replacement of Personnel other than those set forth in Section 3.3 above, Provider will use commercially reasonable efforts to accommodate Adobe's request.
  - 3.5 Provider will supervise and monitor its Personnel and ensure that all Personnel are properly documented workers. Prior to beginning work for Adobe, all Personnel must pass a background check according to local standards. Vendor certifies that background checks have been completed, and successfully cleared, for all Personnel assigned to Adobe. Adobe reserves the right, from time to time, to audit redacted reports to ensure compliance with this requirement.
  - 3.6 Provider will advise Adobe of Provider's progress in performing the Professional Services in a manner and frequency indicated in the SOW.
  - 3.7 If Adobe decides to modify the scope of the Professional Services, Adobe will notify Provider of the proposed change(s), and Provider will furnish Adobe with a written offer to provide the services and an estimate of the costs, if any, within five days of Adobe's notice. Any change in the scope of the Professional Services will not be effective until Adobe accepts the offer with a signed writing.
- 4. Fees**
- 4.1 All fees and rates are set out in the applicable Order Form or SOW and payable 60 days from receipt of invoice that includes a valid Adobe purchase order number in accordance with the schedule of payment. In no event will Adobe be responsible for fees in excess of the amounts set forth in the Order Form or the SOW. All invoices must be sent via email to ap@adobe.com. Adobe will not pay invoices submitted more than 120 days past the invoice date set forth in an Order Form or SOW.
  - 4.2 No part of Provider's compensation under this Agreement will be subject to withholding for any Taxes or other required payments. Provider will;
    - (A) report as income, and pay all Taxes on, all compensation received by Provider pursuant to this Agreement; and
    - (B) pay all Taxes, insurance and other benefits arising from Provider's employment of Personnel performing Professional Services.
  - 4.3 Provider's invoice must state all applicable Taxes. Provider will remit all charges to the appropriate tax authority unless Adobe provides sufficient proof of tax exemption. When property is delivered, services are provided, or the benefit of services occurs within jurisdictions where Provider's collection and remittance of taxes is required by law, Provider will have the sole obligation to pay the taxes to the appropriate tax authorities. If Provider does not collect taxes from Adobe and is subsequently audited by any tax authority, Adobe's liability will be limited to the tax assessment with no reimbursement to Provider for any penalty or interest charges. Each party is responsible for its own income taxes or taxes based on gross revenues, including but not limited to business and occupation taxes.
  - 4.3 If this Agreement includes hosting fees, data, or storage fees, and related services fees, and the related services are taxable or become taxable, Provider will collect the taxes that are due from Adobe and will remit to the appropriate taxing authorities. If taxes are imposed on gross revenues from the provision of services, Provider will remit those taxes



Master Agreement ID:

to the taxing authority prior to deducting for Adobe's share of the services. Provider will not suspend any part of the Software where Adobe is reasonably disputing any amount due to Provider.

- 4.4 Additional costs for travel expenses, if any, will be reimbursed with Adobe's express, prior written consent in accordance with Adobe's Business Travel and Expense Policy, attached as [Exhibit D](#).
- 4.5 Neither Provider, nor any Personnel will receive any Adobe-sponsored benefits, including paid vacation, sick leave, pension, medical or disability insurance, worker's compensation or 401(k) participation, from Adobe as an agent, consultant, or employee. If Provider or any Personnel are reclassified by a government agency or court as an employee, Provider or its applicable Personnel will become a reclassified employee and will receive no benefits except those mandated by applicable law, even if by the terms of Adobe's benefit plans in effect at the time of reclassification Provider or Personnel would otherwise be eligible for those benefits.

## 5. Term, Termination and Survival

- 5.1 **Term.** The term of this Agreement will begin on the Effective Date and will continue until the subscription end date, as identified on the Order Form (the "Initial Term"). Following the Initial Term or any Renewal Period as defined below, the parties may execute a new Order Form for a subsequent term (each, a "Renewal Period").
- 5.2 **Termination for Breach.** Either party may terminate this Agreement should the other party breach any of its material obligations and the breach continues uncured for 30 days after written notice to the breaching party.
- 5.3 **Termination due to Bankruptcy.** Either party may terminate this Agreement, Order Form, or SOW with written notice if either party is adjudicated bankrupt, files a voluntary petition of bankruptcy, makes a general assignment for the benefit of creditors, is no longer able to function in the normal course of business, or if a receiver is appointed on account of insolvency.
- 5.4 **Termination for Convenience.** Adobe may terminate this Agreement, Order Form, or SOW at any time effective immediately on Provider's receipt of written notice. Adobe's only obligation to Provider on termination will be to pay any unpaid charges for fees incurred or services performed up to the effective date of termination. Provider may terminate the Agreement at any time with 30 days prior written notice if there are no outstanding Order Forms or SOWs.
- 5.5 **Effect of Termination.** Following termination or expiration of the Agreement, Adobe will have a 30-day period to access its account and download or export Adobe Information. Provider will use commercially reasonable efforts to assist Adobe in transferring Adobe Information off of Provider's servers. After the 30-day period, Provider will convert Adobe's account to an inactive status. Provider will maintain all Adobe Information for a period of not more than 60 days following receipt of written notice.
- 5.6 **Survival.** On termination or expiration of this Agreement, each party will be released from all obligations and liabilities to the other party occurring or arising after that date; except that any termination or expiration will not relieve the parties of their obligations under Sections 5, 7, 8, 9, and 10, nor will termination relieve the parties from liability arising from breach of this Agreement. Provider will comply with Adobe's reasonable directions to effect the orderly transition of all services then being performed by Provider or that Provider is then responsible for performing. Adobe and its employees and agents will cooperate with Provider's obligations under this Section. Provider will deliver to Adobe originals and all copies of any Confidential Information, Adobe Information, and other materials supplied to Provider by Adobe.

## 6. Ownership

- 6.1 Adobe has no right or claim to the intellectual property rights in and to the Software, the Documentation, the Professional Services, or to Provider's Confidential Information. Adobe will notify Provider if Adobe becomes aware of any potential infringement of Provider's rights.
- 6.2 Provider has no intellectual property rights or other claim to the Adobe Information that is hosted, accessed, stored, processed or transmitted to and from the Software. Provider will cooperate with Adobe to protect Adobe's intellectual property rights and Adobe Information. Provider will promptly notify Adobe if Provider becomes aware of any potential infringement of those rights.



Master Agreement ID:

6.3 Adobe will not:

- (A) use trademarks, trade names, service marks, logos, domain names, other distinctive brand features separate from the Software, the Professional Services, or the Documentation without the express written consent of Provider; or
- (B) remove, obscure, or alter any copyright notice, trademark, or other proprietary right appearing in or on any item included with the Software, or the Documentation.

## 7. Confidentiality

A party disclosing CI is referred to as “Discloser” and the party receiving CI is referred to as “Recipient”. All information furnished by either party is confidential. Each party will use the other party’s CI only as necessary to perform under this Agreement. The parties will only disclose the CI to persons or entities who need to know the information to perform under this Agreement, and who have, prior to disclosure by Recipient, agreed in writing to protect the Discloser’s CI to the extent expressed in this Agreement. If a Recipient receives a court order or is otherwise required by law to disclose any CI, the Recipient will notify the Discloser immediately upon receipt of the court order or other document requiring disclosure so that the Discloser has time to object and move for a protective order. The Recipient will file any CI under seal or request that the court or administrative body seal the CI prior to the Recipient’s disclosure. Except as may be required by a court order or law, the parties obligations regarding CI will remain in full force and effect in perpetuity. Notwithstanding anything contained in this Agreement, and where the Products or Services are provided in the United States, the parties understand that, pursuant to Section 1833 of Title 18, United States Code, the parties have the right to (a) disclose, either directly or indirectly, in confidence trade secrets to United States federal, state, and local government officials, or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law; and (b) disclose trade secrets in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b). If Provider will process, create, access, transmit, transfer, or store Adobe Confidential Information, including Personal Information, in any manner, Provider will comply with the Information Security and Privacy Requirements available at [https://www.adobe.com/content/dam/cc/en/legal/terms/enterprise/pdfs/2013/Information\\_Security\\_and\\_Privacy\\_Requirements.pdf](https://www.adobe.com/content/dam/cc/en/legal/terms/enterprise/pdfs/2013/Information_Security_and_Privacy_Requirements.pdf). In the event of any conflict between this Agreement (or any portion thereof) and the Information Security and Privacy Requirements, the terms of the Information Security and Privacy Requirements shall prevail.

## 8. Representations and Warranties. Provider represents and warrants to Adobe:

- 8.1 The Software and Professional Services will not infringe any third-party intellectual property rights,
- 8.2 Provider will use Personnel that have the requisite experience and qualifications to perform any Professional Services,
- 8.3 The Professional Services will comply with all applicable laws, statutes, ordinances and regulations,
- 8.4 The Software will substantially comply with the functionality and performance set forth in Exhibit B,
- 8.5 The Software will be free from significant errors and defects in workmanship and materials and the Professional Services will be provided in a workmanlike and competent manner in accordance with the professional standards in the cloud computing/online services industry,
- 8.6 The Software does not contain an undisclosed tracking technology that may be used in connection with the internet, world-wide-web, or a mobile network that is capable of obtaining information about the activity of an end user. This provision does not include tracking technology that is materially described in Provider’s Documentation where the technology only operates as described in the Documentation.
- 8.7 The terms of this Agreement supersede any other license terms supplied by Provider that may be contained in the Software, including any references to GPL, ALGPL, or similar licenses, and
- 8.8 If any part of the Professional Services have been obtained by a third party, Provider will obtain all intellectual property rights necessary for Adobe’s use as intended under this Agreement.

## 9. Indemnity.



Master Agreement ID:

- 9.1 Provider will defend, indemnify, and hold Adobe, its officers, directors, employees, sub-licensees, customers, and agents, harmless from and against any and all third-party claims, losses, liabilities, damages, expenses, costs, attorneys' fees, and court costs related to or arising out of:
- (A) Provider's or its Personnel's performance or breach of this Agreement ("General Claims"), and
  - (B) allegedly or actually infringing on any intellectual property rights of a third party by using the Software or Services ("Infringement Claims"), provided;
  - (C) Adobe will supply Provider with prompt written notice of any claims. Provider will have sole control of the defense of any claims, provided, Adobe may participate in the defense and settlement of claims at its own expense. Any settlement of claims that imparts any obligation or liability on Adobe will require Adobe's prior written consent. Adobe will supply Provider with all reasonable assistance and information in the defense and settlement of claims at Provider's expense.
- 9.2 If an Infringement Claim endangers or disrupts Adobe's use of the Software or Services, Provider will, at no charge to Adobe:
- (A) obtain a license for Adobe's continued use of the Software or Services,
  - (B) modify the Software or Services to avoid infringement without impairing the functionality,
  - (C) replace the Software or Services with a compatible, functionally equivalent, and non-infringing replacement; or, if options (A) through (C) cannot be accomplished under commercially reasonable terms, or
  - (D) terminate this Agreement and refund a pro-rata portion of fees paid in accordance with this Agreement.
- 9.3 Adobe will defend, indemnify, and hold Provider, its officers, directors, employees, sub-licensees, customers, and agents harmless from and against any and all third-party claims, losses, liabilities, damages, expenses, costs, attorney's fees, and court costs related to or arising out of:
- (A) Adobe's breach of the license in Section 2 of this Agreement, or
  - (B) Any claim brought against Provider relating to Adobe Information.

## 10. General

- 10.1 **Relationship of Parties.** Provider is an independent contractor and is not an agent or employee of Adobe. Provider has no authority to bind Adobe by contract or otherwise. Provider will perform any Professional Services under the general direction of Adobe, but Provider will determine, in Provider's sole discretion, the manner and means that the Professional Services are accomplished, subject to the express conditions that Provider will:
- 10.2 **Compliance with laws.** Adobe is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws, and other Adobe policies, including the following:
- (A) Commercial Email Guidelines currently available at: <http://www.adobe.com/content/dam/Adobe/en/legal/documents/CommercialEmailGuidelinesForURL.pdf>;
  - (B) Insider Trading Policy currently available at: [http://www.adobe.com/content/dam/acom/en/legal/documents/LGL-SOP-01-002\\_Insider\\_Trading\\_ext.pdf](http://www.adobe.com/content/dam/acom/en/legal/documents/LGL-SOP-01-002_Insider_Trading_ext.pdf)
  - (C) Harassment and Discrimination Prevention Policy currently available at [http://www.adobe.com/content/dam/acom/en/legal/documents/HTR-SOP-01-003\\_Harassment\\_and\\_Discrimination\\_Prevention\\_Policy.pdf](http://www.adobe.com/content/dam/acom/en/legal/documents/HTR-SOP-01-003_Harassment_and_Discrimination_Prevention_Policy.pdf)



Master Agreement ID:

(D) Business Partner Code of Conduct currently available at:

<https://www.adobe.com/content/dam/acom/en/corporate-responsibility/pdfs/adobe-business-partner-code-of-conduct.pdf>

- 10.3 **Subcontracting.** Provider will not subcontract any portion of the Professional Services without Adobe's prior written consent. If Provider does subcontract any portion of the Professional Services, then Provider will be responsible and liable for the performance and acts or omissions of its subcontractors.
- 10.4 **Assignment.** Neither party may assign, delegate or subcontract any part of this Agreement without the other party's prior written approval. Notwithstanding the foregoing, either may assign this Agreement in its entirety to a surviving person or entity under a merger or acquisition by providing written notice to the non-assigning party, preferably in advance, but in any case, within a commercially reasonable time frame after such merger or acquisition, not to exceed thirty (30) days, only if any Assignee will be bound by all of the applicable provisions of this Agreement. Adobe reserves the right to terminate the Agreement once the assignment notice is provided.
- 10.5 **Equitable Relief.** Either Party may enforce this Agreement and any of its provisions by injunction, specific performance, or any other equitable relief, without prejudice to any other rights and remedies that such party may have.
- 10.6 **Attorney Fees.** Each party will have the right to recover reasonable attorneys' fees in any action in law or equity brought to enforce the terms of this Agreement.
- 10.7 **Governing Law; Choice of Forum and Venue.** This Agreement (including the arbitration agreement in this section where applicable) and all matters relating to this Agreement will be governed by and construed in accordance with the laws in force in:
- (A) the State of California, if Provider's Principal Place of Business is in the United States, Canada, or Mexico;
  - (B) Japan, if Provider's Principal Place of Business is in Japan;
  - (C) Singapore, if Provider's Principal Place of Business is in a member state of the Association of Southeast Asian Nations (ASEAN) excluding Myanmar, mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C., the Republic of Korea, Bangladesh, or Nepal; or
  - (D) England and Wales, if Provider's Principal Place of Business is in Australia, New Zealand, India, Sri Lanka, Myanmar, or any other location not named above.
  - (E) The respective courts of Santa Clara County, California when California law applies, Tokyo District Court when Japanese law applies, and the competent courts of London, England, when the law of England and Wales applies, will each have nonexclusive jurisdiction over all disputes relating to this Agreement.
  - (F) When Singapore law applies, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination, will be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference into this section. There will be one arbitrator, selected jointly by both parties. If the arbitrator is not selected within 30 days of the written demand by a party to submit to arbitration, the Chairman of the SIAC will make the selection. English will be the language of the arbitration.
  - (G) Notwithstanding any provision in this Agreement, either party may request any judicial, administrative, or other authority in any other jurisdiction to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, prior to the institute of legal or arbitration proceedings, or during the proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies.
  - (H) This Agreement will not be governed by the conflict of laws 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.
- 10.8 **Notice.** Any notices will be given to the appropriate party at the address specified at the beginning of this Agreement, or as otherwise specified in writing. Notice will be by personal delivery, by certified or registered mail, or by reputable courier. Notice will be deemed given on personal delivery to the appropriate address, on receipt of certified or registered mail, or if sent by courier, on the date of delivery shown in the courier's records.
- 10.9 **Complete Understanding; Modification; Waiver.** This Agreement constitutes the full and complete understanding of the parties and supersedes all prior understandings and agreements. Any waiver, modification, or amendment of any



Master Agreement ID:

provision of this Agreement will be effective only if in writing and signed by the parties. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

10.10 **Insurance.** Prior to the effective date of this Agreement, Provider shall procure and maintain, at its sole cost and expense, at all times during the term of the Agreement and for a period of three (3) years thereafter, the insurance coverage for not less than the limits described in Adobe’s Vendor Insurance Requirements at <https://www.adobe.com/content/dam/acom/en/legal/documents/Vendor-Insurance-Requirements-05032018.pdf> or as required by law, whichever is greater. The foregoing coverage shall name Adobe as an additional insured.

10.11 **Force Majeure.** Non-performance by either party will be excused if the non-performance is a result of strike, fire, flood, governmental action, earthquake, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party for up to a maximum of 45 days.

10.12 **Export.** Provider’s Products are subject to the U.S. Export Administration Regulations and other export laws, restrictions, and regulations and Provider will comply with those export laws when providing the Software and Professional Services.

10.13 **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, the remainder of this Agreement will continue in full force and effect.

The parties have signed this Agreement as of the Effective Date.

**ADOBE INC.**

**PROVIDER**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date