

**1. INTRODUCTION****1.1 Definitions**

Definitions used in this Agreement are set out in Schedule A to these General Terms.

**1.2 Interpretation**

In this Agreement, unless otherwise stated:

(A) A reference to:

- (1) a person includes a natural person, partnership, joint venture, government agency, association, corporation, or other body corporate;
- (2) a party includes its successors and permitted assigns;
- (3) the singular includes the plural and vice versa;
- (4) a document or instrument includes the document or instrument as novated, amended, altered, supplemented, or replaced from time to time;
- (5) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, or rule of common law or equity, and is a reference to that law as amended, consolidated or replaced;
- (6) the words “such as”, “including”, “particularly”, “for example” and similar are not to be interpreted as words of limitation;
- (7) an agreement, representation, warranty, or indemnity on the part of two or more persons binds them jointly and severally;
- (8) an agreement, representation, warranty, or indemnity in favour of two or more persons is for the benefit of them jointly and severally; and
- (9) a gender includes all genders.

(B) Other grammatical forms of a defined word or phrase have a corresponding meaning;

(C) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it; and

(D) All headings are for ease of reference only and not intended to affect meaning or interpretation.

**2. PAYMENT OF FEES**

This section 2 (Payment of Fees) applies only if Customer orders the Products and Services directly from Adobe. If Customer orders the Products and Services from an Adobe Partner, payment terms are agreed between Customer and the Adobe Partner.

**2.1 Payment.** Customer must pay the fees according to the payment terms in the Sales Order. All payments must be made by electronic transfer according to the remit instructions on the invoice. All invoices will only be delivered electronically to Customer. Customer must bear any charges imposed by its bank for the payments. Adobe may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full. Any fees that are unpaid as of the date of termination or expiration will be immediately due and payable. Customer must provide a detailed remittance advice with each payment to Adobe via email to [bvar@adobe.com](mailto:bvar@adobe.com) no later than the date of the payment. If Customer is not a publicly traded corporation, upon Adobe's request, Customer will provide the necessary financial documents to allow Adobe to ascertain the credit-worthiness of Customer.

**2.2 Failure to Pay.** If Customer fails to pay any amount due under this Agreement according to the payment terms in the Sales Order (which is not disputed as described in section 2.3 (Disputes)), Adobe will send Customer a reminder notice. If Customer fails to pay within 15 days of the date of the reminder notice, Adobe may, in its sole discretion, terminate the applicable Sales Order or suspend or restrict the provision of the Products and Services.

2.3 **Disputes.** If Customer believes in good faith that Adobe has incorrectly billed Customer, Customer must contact Adobe in writing within 30 days of the invoice date, specifying the error. Unless Customer has correctly notified Adobe of the dispute, Customer must reimburse Adobe's reasonable collection costs. Customer must pay the undisputed portions of Adobe's invoice as required by this Agreement.

#### 2.4 Taxes

(A) Prices do not include applicable services tax, goods and services tax or value added tax ("**Applicable Taxes**").

(B) The following applies only if Customer orders the Products and Services directly from Adobe:

(1) If Customer is located in India, Philippines, Vietnam, Indonesia, or Thailand, Customer must self-assess and remit all Applicable Taxes to the appropriate tax authority. If Customer is located in any other country, Adobe will invoice Customer for all Applicable Taxes, and Customer must pay these Applicable Taxes. Where applicable, Customer must provide a tax-exemption claim to Adobe before placing an order.

(2) If Customer is required to withhold income taxes from its payment to Adobe in any country except India, Customer must send Adobe an official tax receipt within 60 days of Customer's payment to Adobe.

(3) If Customer is located in India and is required to:

(a) withhold income taxes from its payment to Adobe, Customer must send Adobe an official tax receipt within 30 days of the end of the fiscal quarter in which the Adobe invoice is issued. For this section, a fiscal quarter means a 3-month period ending on 30 June, 30 September, 31 December or 31 March, as prescribed under Indian tax laws; or

(b) deduct any equalization cess of 6% (or such other percentage as may be prescribed under Indian tax laws) that is applicable to any Products and Services under Indian laws ("**Equalization Cess**"):

(i) Customer must deposit the Equalization Cess in India in accordance with applicable laws; and

(ii) Customer must not withhold income tax from its payment to Adobe for these Products and Services, notwithstanding section 2.4(B)(3)(a).

(4) Customer must email the withholding tax receipts (envisaged under sections 2.4(B)(2) and 2.4(B)(3)(a) in a PDF format to Adobe Systems Software Ireland Limited at [credit-sg@adobe.com](mailto:credit-sg@adobe.com), and mail the original certificate to Adobe: Attention Credit Department, Adobe Systems Software Ireland Limited, 4-6 Riverwalk, Citywest Business Campus, Saggart, Dublin 24 Ireland.

### 3. DELIVERY

On-premise Software is deemed to be delivered and accepted by Customer on the earlier of the date the On-premise Software is made available for electronic download or, physical shipment, if applicable. Cloud Services are deemed to be delivered and accepted on the Licence Term start date. In the event Customer is given access to the Products and Services prior to the License Term start date, such access is granted solely for implementation and testing purposes.

### 4. LICENCE AND RESTRICTIONS

4.1 **Licence Grant for Cloud Services.** Subject to the terms and conditions of this Agreement, Adobe grants Customer for its direct beneficial business purposes, during the Licence Term, a non-transferable and non-exclusive licence to:

(A) permit Users to access the Cloud Services and where applicable, Reports, through the applicable interfaces;

(B) install, implement, and use the Distributed Code on Customer Sites;

(C) develop and test Customer Customizations (as defined in the applicable PSLT) to evaluate potential configurations of the Cloud Services; and

(D) use the Cloud Services in accordance with the Documentation.

Unless otherwise specifically limited in the Sales Order, Adobe will provide Customer with User login IDs and passwords in a quantity agreed between Customer and Adobe.

4.2 **Licence Grant for On-premise Software.** Subject to the terms and conditions of this Agreement, Adobe grants Customer for its direct beneficial business purposes, during the Licence Term, a non-transferable and non-exclusive licence to:

- (A) install and use the On-premise Software in accordance with the Documentation on Computers, for the platforms and quantities set out in the Sales Order; and
- (B) make a reasonable number of copies of the On-premise Software for archival purposes and install and use the copies only when the primary copy has failed or is destroyed. Customer may also install copies of the On-premise Software in a disaster recovery environment, on a cold backup basis, for use solely in disaster recovery, and not for production, development, evaluation, or testing. “**Cold backup basis**” in this sub-section means that the backup copies are completely disconnected from any use environment and not receiving automatic data updates, and those backup copies require a manual activation process to pick up the use environment load during the failure of the primary copies.

4.3 **Licence Conditions.** Except to the extent expressly permitted under this Agreement, Customer agrees as a condition of the licenses that it must not:

- (A) use the Products and Services (1) in violation of any applicable law or regulation, or in connection with unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, publicity, or intellectual property laws); or (2) in a manner that would cause a material risk to the security or operations of Adobe or any of its customers, or to the continued normal operation of other Adobe customers;
- (B) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Products and Services;
- (C) offer, use, or permit the use of the Products and Services in a computer service business or third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party;
- (D) (1) attempt to interact with the operating system underlying the Cloud Services, or (2) modify, create derivative works of, adapt, translate, reverse engineer (including monitoring or accessing the inputs and output flowing through a system or an application), decompile, or otherwise attempt to discover within any Adobe Technology, the source code, data representations, or underlying algorithms, processes and methods. This restriction will not apply to the extent it limits any non-waivable right Customer may enjoy under applicable law;
- (E) remove, obscure, or alter any proprietary notices associated with the Products and Services (including any notices in Reports);
- (F) use any software components, modules, or other services that may be delivered with the Products and Services, but which are not licensed to Customer and identified in the Sales Order;
- (G) decouple any components of the On-premise Software for use on different Computers, as the On-premise Software is designed and provided to Customer, for use as a single product; or
- (H) share its login IDs and passwords, or allow use of the same login ID simultaneously by two or more Users, and Customer is responsible for unauthorised access to its login IDs and passwords.

Adobe reserves all other rights not expressly granted in this Agreement.

4.4 **Third-Party Providers.** Customer is responsible for complying with any applicable terms and conditions of any third party data, products, services, and platforms used by Customer in conjunction with the Products and Services. Customer acknowledges that at Customer’s request, Adobe may send Customer Data to such third-party providers.

4.5 **Regional Service Limitations.** Unless use in a Restricted Country is specifically licensed in the Sales Order or the Products and Services are part of the Limited Subset of Cloud Services listed by Adobe at <https://www.adobe.com/legal/terms/enterprise-licensing/rsl-ww.html> or other similar country-specific licensing terms document (incorporated herein by reference), Customer is not permitted to use or allow its Users to use the Cloud Services in any Restricted Country. “**Restricted Country**” means mainland China, Russia and any other country where access or usage is restricted by local laws.

- 4.6 **Free Versions.** Adobe may provide, at no additional cost, access to Adobe software or services hosted by or on behalf of Adobe and provided to Customer as a shared instance (“Free Versions”). At its option, Customer may use the Free Versions, subject to the terms of this Agreement. Notwithstanding the foregoing, the Free Versions will be provided to Customer on an “AS-IS” basis, without warranty, and is not Indemnified Technology.

## 5. THIRD-PARTY ACCESS

- 5.1 **Use by Affiliates.** Where specified in a Sales Order, Customer may allow its Affiliates to use and access the Products and Services.
- 5.2 **Outsourcing and Third-Party Access.** Customer may allow a third-party contractor to operate, use or access the Products and Services solely on Customer’s behalf, provided such use or access is only for Customer’s direct beneficial business purposes. Customer is responsible for ensuring that any third party or Affiliate operating, using or accessing the Products and Services on Customer’s behalf complies with the terms of this Agreement. Customer is responsible for and liable for the acts or omissions of such Affiliate or third party as if they were Customer’s acts or omissions.

## 6. CUSTOMER DATA

- 6.1 **Ownership.** As between Adobe and Customer, Customer owns (or where applicable, must ensure it has a valid license to) the Customer Data, subject to Adobe’s rights under this Agreement.
- 6.2 **Permitted Use.** Customer agrees that Adobe and its Affiliates may use, copy, transmit, sub-license, aggregate, model, index, store, and display Customer Data for one or more of the following: (1) to perform its obligations under this Agreement; (2) for product improvement and development; (3) to publish and distribute any anonymized information (i.e. information where neither Customer nor its site visitors are capable of being identified, which may be aggregated with other customers’ anonymous information); or (4) to enforce its rights under this Agreement.
- 6.3 **Responsibility.**
- (A) Adobe does not communicate with Customer’s users directly. Customer is responsible for complying with (including giving any notifications, obtaining any consents, and making any disclosures required under) Data Protection Laws.
  - (B) Customer retains complete control over the installation and configuration of Distributed Code, and all Customer Sites and Customer Data. In connection with Customer’s use of the Products and Services (including Customer Sites used with the Cloud Services and collection and use of all Customer Data, Customer must comply with its privacy policy and all applicable laws and regulations. Customer will take reasonable steps to identify and promptly remove any Customer Data that violates the requirements of section 4.3(A) (“**Unlawful Content**”), in accordance with applicable laws and regulations. If there is Unlawful Content, Adobe may suspend services and remove the Unlawful Content.
  - (C) **Sensitive Personal Data.** Unless specifically agreed to by Adobe in writing, Customer agrees not to collect, process, or store any Sensitive Personal Data using the Cloud Services, or otherwise make Sensitive Personal Data available to Adobe or Adobe’s third-party providers.
  - (D) **Professional Services.** For Professional Services, Customer will not provide access to Personal Data to Adobe unless specifically agreed to by Adobe in writing.
- 6.4 **Consumer-Generated Content.** If content generated by consumers of Customer is uploaded to the Cloud Services, the following terms apply:
- (A) Adobe does not review all content uploaded to the Cloud Services, but Adobe may use available technologies or processes to screen for certain types of illegal content (for example, child pornography) or other abusive content or behaviour (for example, patterns of activity that indicate spam or phishing); and
  - (B) Adobe may access or disclose information about Customer, its consumers, or Customer’s use of the Cloud Services when it is required or authorised by law or regulation (e.g. when Adobe receives a valid subpoena or search warrant).

- 6.5 **Data Retention.** With respect to Cloud Services, Customer Data may be permanently deleted from Adobe's servers 25 months from the date of its collection or receipt, unless specified otherwise in the applicable PSLT.
- 6.6 **Customer's Users/Privacy Policy.** Customer must ensure it does not directly or indirectly cause Adobe or third-party providers that operate servers or host data for the Cloud Services, as applicable, to breach any Data Protection Laws in the collection, storage, access, transfer, use or disclosure of Personal Data arising from or in connection with this Agreement. Where required under Data Protection Laws, Customer must ensure that:
- (A) each Customer Site contains a notice to its users that identifies the collection, use, disclosure, and transfer of their Personal Data by Customer, Adobe, or third-party host providers in connection with the Cloud Services, as applicable; and
  - (B) Customer, when disclosing or transferring Personal Data from any source (including Customer Sites) to Adobe or third-party host providers, complies with the requirements for such disclosure or transfer.
- 6.7 **Usage Information.** Adobe may develop, modify, improve, support, customise, and operate its products and services based on information that Adobe collects on Users' interactions with the Products and Services. Such information does not include any Customer Data.

## 7. CONFIDENTIALITY

- 7.1 **Confidentiality.** The receiving Party will treat Confidential Information with reasonable care and disclose only on a need to know basis or as permitted under this Agreement. The receiving Party will only use Confidential Information for the purposes of performing its obligations or as permitted under this Agreement. However, a receiving Party may disclose Confidential Information of the disclosing Party:
- (A) if approved in writing by the disclosing Party;
  - (B) if required by law or regulation;
  - (C) in the event of dispute between the Parties, as necessary to establish the rights of either Party; or
  - (D) as necessary to provide the Products and Services licensed by Customer.

In the case of (B) and (C), the receiving Party will provide reasonable advance notice to the other party and provide reasonable assistance to limit the scope of the disclosure unless prohibited by law or regulation.

- 7.2 Under this section 7 (Confidentiality) and the definition of "Confidential Information", a reference to a Party means a Party and its Affiliates. The receiving Party is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the receiving Party under this section 7 (Confidentiality).

## 8. INDEMNITIES

### 8.1 Data Privacy Claims.

- (A) **Cooperation and Mitigation.** Both Parties will co-operate in good faith to avoid and mitigate Data Privacy Claims keeping in consideration the rights of affected data subjects and the reputation of each Party. The Parties agree to provide each other reasonable assistance in investigating, mitigating, and resolving any Data Privacy Claims. Any information and materials exchanged or discovered in the course of such investigations, mitigation and resolution will be the disclosing Party's Confidential Information.
- (B) **Data Privacy Claims.** Indemnifying Party will at its expense, indemnify and defend the Indemnified Party against those losses of the Indemnified Party set out below in this section 8.1(B), to the extent permitted by law and directly attributable to a third party Data Privacy Claim against the Indemnified Party: (1) settlement amounts negotiated by Indemnifying Party; (2) any damages finally awarded by a court; (3) administrative fines or penalties imposed by a regulatory authority; (4) reasonable attorney's fees; and (5) reasonable out-of-pocket expenses associated with satisfying applicable statutory requirements related to forensic analysis, credit monitoring, and notifying affected individuals of the incident giving rise to the Data Privacy Claim, as applicable.
- (C) **Exceptions.** Indemnifying Party will have no liability for or obligation to defend any Data Privacy Claim to the extent such Claim arises from any act or omission of Indemnified Party that impedes or prevents Indemnifying Party's ability to comply with applicable data security and privacy laws.

### 8.2 Intellectual Property Claims.

- (A) **Adobe's Obligations.** Adobe will defend, at its expense, any third-party Claim against Customer made during the Licence Term to the extent the Claim alleges that (1) the Indemnified Technology directly infringes the third party's patent, copyright, or trade mark; or that (2) Adobe has misappropriated the third party's trade secret ("**Infringement Claim**"). Adobe will pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Adobe).
- (B) **Adobe's Response.** In the defence or settlement of any Infringement Claim, Adobe may, at its sole option and expense:
- (1) procure for Customer a licence to continue using the Indemnified Technology under the terms of this Agreement;
  - (2) replace or modify the allegedly infringing Indemnified Technology to avoid the infringement; or
  - (3) where (1) or (2) are not reasonably or commercially feasible, terminate Customer's licence and access to the Indemnified Technology (or its infringing part) and refund:
    - (a) in the case of Indemnified Technology licensed for a limited term, any prepaid unused fees as of the date of termination; or
    - (b) in the case of On-premise Software licensed for a perpetual term, an amount equal to the pro-rata value of the On-premise Software, calculated by depreciating the fee paid by Customer for the On-premise Software on a straight-line basis using a useful life of 36 months from the date of initial delivery of the On-premise Software,but only if Customer destroys all copies of the allegedly infringing Indemnified Technology from all computer systems on which it was stored.
- (C) **Exceptions.** Adobe will have no liability for any Infringement Claim that arises from any:
- (1) use of the Indemnified Technology in violation of this Agreement;
  - (2) modification of the Indemnified Technology by Customer (or any third party acting on Customer's behalf);
  - (3) failure by Customer to install the latest updated version of the Indemnified Technology as requested by Adobe to avoid infringement; or
  - (4) third-party products, services, hardware, software, or other materials, or combination of these with Indemnified Technology, if the Indemnified Technology would not be infringing without this combination.
- 8.3 **Other Claims.** Customer will, at its expense, defend or settle any third-party Claim against Adobe to the extent it arises from Customer's breach of section 4.4 (Third-Party Providers).
- 8.4 **Conditions.** Indemnifying Party, as applicable, will have no liability for any Claim under section 8.1 (Data Privacy Claims), section 8.2 (Intellectual Property Claims), or section 8.3 (Other Claims) that arises from any failure of Indemnified Party to:
- (A) notify Indemnifying Party in writing of the Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Indemnifying Party is prejudiced by this failure;
  - (B) provide Indemnifying Party with reasonable assistance requested by Indemnifying Party for the defence or settlement (as applicable) of the Claim;
  - (C) provide Indemnifying Party with the exclusive right to control and the authority to settle the Claim; or
  - (D) refrain from making admissions or statements about the Claim without Indemnifying Party's prior written consent.
- 8.5 **Sole and Exclusive Remedy.** The remedies in this section 8 (Indemnities) are in addition to any termination or suspension remedies expressly set forth in this Agreement, Indemnified Party's sole and exclusive remedies and Indemnifying Party's sole liability regarding the subject matter giving rise to any Claim.
- 8.6 **No Exclusion of Mandatory Law.** Nothing in this Agreement is intended to supersede any applicable law that would preclude Customer from providing an indemnification under this Section 8.

## 9. LIMITATION OF LIABILITY

- 9.1 Subject to section 9.3 and to the maximum extent permitted by law, in no event is either Party liable for any of the following arising out of or concerning this Agreement, however caused (including, without limitation, by a Party's negligence): loss of revenue; loss of actual or anticipated profits (including loss of profits on contracts); loss of the use of money; loss of anticipated savings; loss of business; loss of operating time or loss of use; loss of opportunity; loss of goodwill, loss of reputation; any indirect or consequential damages; or any damages not arising naturally and according to the usual course of things from the relevant breach, whether or not such loss may reasonably be supposed to have been in the contemplation of both Parties, at the time they made the contract, as the probable result of the relevant breach. This section 9.1 does not apply to those amounts expressly recoverable by the Indemnified Party under section 8 (Indemnities) regardless of how such amounts are classified for damages purposes.
- 9.2 Subject to section 9.3 and to the maximum extent permitted by law, the maximum aggregate liability of each Party arising out of or related to this Agreement is limited to an amount equal to the aggregate of the fees payable by Customer under the applicable Sales Order during the 12 months before the initial Claim, provided however that each Party's maximum aggregate liability arising out of or related to section 7 (Confidentiality) and section 8 (Indemnities) are limited to the greater of USD 3,000,000.00 and two times the aggregate of the fees payable by Customer under the applicable Sales Order.
- 9.3 Sections 9.1 and 9.2 (Limitation of Liability):
- (A) apply regardless of the form or source of liability, including negligence, whether the liability was foreseeable, and whether a Party has been advised of the possibility of the liability; and
  - (B) do not apply to Customer's liability arising out of use of Adobe Technology beyond the scope of any licence granted under this Agreement, or Customer's failure to pay any amounts owing to Adobe under this Agreement; and
  - (C) do not apply to either Party's liability for (i) death, bodily injury, or damage to tangible personal property resulting from a Party's negligence; (ii) gross negligence or willful misconduct; (iii) fraud; or (iv) loss or damage for which liability cannot be excluded or limited by law.

## 10. WARRANTIES

- 10.1 **Limited Warranty and Remedy for Cloud Services.** Adobe warrants that the Cloud Services, as delivered to Customer, will substantially conform to the applicable Documentation during the Licence Term, to the extent that the Cloud Services constitute Indemnified Technology. Customer must notify Adobe of a claim under this warranty within 45 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Customer's sole and exclusive remedy and Adobe's sole liability under or in connection with this warranty will be a replacement of the Distributed Code (as applicable), or if replacement is not commercially reasonable, a termination of the applicable Cloud Services and a refund of any pre-paid fees for the unused portion of the license (calculated at the date of termination) for the applicable Cloud Services.
- 10.2 **Limited Warranty and Remedies for On-premise Software.** Adobe warrants that the On-premise Software will substantially conform to the applicable Documentation for 120 days following the delivery of the On-premise Software, to the extent that the On-premise Software constitutes Indemnified Technology. Customer must make these warranty claims to Adobe within this 120-day period. To the extent permitted by law, Customer's sole and exclusive remedy and Adobe's sole liability under or in connection with this warranty will be, at Adobe's option, a replacement of the On-premise Software, or refund of any prepaid fees for the unused portion of the license (calculated at the date of termination) for the On-premise Software.
- 10.3 **Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in this Agreement and any Non-Excludable Provisions, Adobe provides the Products and Services on an "as-is" basis. Adobe, its Affiliates, and third-party providers disclaim and make no other representation, promise, assurance, undertaking or warranty of any kind, express, implied or statutory, including representations, guarantees, conditions or warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, non-infringement, or accuracy. Customer acknowledges that (A) neither Adobe, its Affiliates nor its third-party providers controls Customer equipment or the transfer of data over communications facilities (including the internet); (B) the Products and Services may be subject to limitations, interruptions, delays, cancellations, and other problems inherent in the use of the communications facilities (including search engines and social media channels); and (C) it is fully responsible to install appropriate security updates and patches. Adobe, its Affiliates, and its third-party providers are not responsible for any interruptions, delays,

cancellations, delivery failures, data loss, content corruption, packet loss, or other damage resulting from these problems.

- 10.4 **Non-Excludable Provisions.** Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, warranty, or other term or condition, implied or imposed by any law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, warranty, term, or condition is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a “**Non-Excludable Provision**”), and Adobe is able to limit Customer’s remedy for a breach of the Non-Excludable Provision, then the liability of Adobe for breach of the Non-Excludable Provision is limited to one or more of the following, at Adobe’s option:
- (A) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - (B) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 10.5 **Australian Consumer Law.** If Customer is an Australian consumer, Adobe’s goods come with guarantees that cannot be excluded under the Australian consumer law. Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. To make a warranty claim under sections 10.1 (Limited Warranty and Remedy for Cloud Services) or 10.2 (Limited Warranty and Remedies for On-premise Software) of these General Terms, Customer must call the Adobe Customer Support Department at 1800 614 863.
- 10.6 **Proportionate Liability.** The liability of a Party for any loss suffered or incurred by the other Party under this Agreement (including under any indemnity) will be reduced proportionately to the extent that any wrongful (including negligent) act or omission of the other Party or its personnel directly caused or contributed to the loss.

## 11. LICENCE COMPLIANCE

- 11.1 For On-premise Software and Cloud Services deployed with an Adobe admin console, both Parties have access to data regarding usage (which, depending on the relevant Product and Service, may include number of Users, marketing contacts, API calls, profiles, data limits, etc.) recorded by this console.
- 11.2 Adobe will also have the right, no more than once every 12 months, to use other means to verify that Customer’s use, installation and deployment of the Products and Services (or other Adobe Technology used in conjunction with the Products and Services) comply with the terms of this Agreement. For On-premise Software Cloud Services, the verification will require Customer to provide within 30 days of request (A) raw data from a software asset management tool of all On-premise Software and Distributed Code installed or deployed by or on behalf of Customer; (B) all valid payment documentation for the On-premise Software and Cloud Services; and (C) any information reasonably requested by Adobe to determine Customer’s use of the On-premise Software and Cloud Services.
- 11.3 If the verification provided in accordance with section 11.2 above is not sufficient to demonstrate Customer’s compliance with the Agreement, Adobe may conduct an onsite audit at Customer’s relevant places of business upon 14 days’ prior notice, during regular business hours, and will not unreasonably interfere with Customer’s business activities. Such verification may be conducted by an appointed independent third party.
- 11.4 If any verification shows Customer is using the Products and Services or other Adobe Technology used in conjunction with the Products and Services: (A) beyond the quantity that was legitimately licensed; or (B) in non-compliance with this Agreement, so that additional fees apply, without limiting Adobe’s rights at law or in equity, Adobe will invoice Customer accordingly and Customer must pay the additional fees within 30 days of invoice date. If use, deployment, or installation exceeds 5% of that which is permitted under this Agreement, Customer must pay Adobe’s reasonable costs of conducting the verification, in addition to paying the additional fees. Any information shared between the Parties during such verification is considered Confidential Information.

## 12. PROFESSIONAL SERVICES



### 12.1 Licence to Deliverables.

- (A) Without limiting or modifying any licence granted to Customer for the On-premise Software or Cloud Services, Adobe grants Customer a non-exclusive, non-sublicensable and non-transferable licence to use the materials developed and provided to Customer by Adobe in performing the Professional Services (“**Deliverables**”) solely in connection with use of the Products and Services for Customer’s direct beneficial business purposes during the Licence Term.
- (B) Adobe retains all rights, title and interest (including intellectual property rights) in and to the Deliverables. To the extent that Customer participates in the creation or modification of any Adobe Technology or Deliverables, Customer irrevocably assigns to Adobe all right, title and interest (including intellectual property rights) in the Adobe Technology or Deliverables. Adobe is free to use the residuals of Confidential Information for any purpose, where “**residuals**” means that Confidential Information disclosed in non-tangible form that may be retained in the memories of representatives of Adobe.

12.2 **Employment Taxes and Obligations.** Adobe is responsible for all taxes and any employment obligations arising from its employment of personnel and contractors to perform the Professional Services.

12.3 **Warranty.** Adobe warrants the Professional Services will be performed in a professional and workmanlike manner. Customer must notify Adobe in writing of any breach of this warranty within 30 days of performance of such Professional Services. To the extent permitted by law, Customer’s sole and exclusive remedy for breach of this warranty and Adobe’s sole liability under or in connection with this warranty will be re-performance of the relevant Professional Services.

12.4 **Use of Subcontractors.** Customer agrees that Adobe may use subcontractors in the performance of the Professional Services. Where Adobe subcontracts any of its obligations concerning the Professional Services, Adobe will not be relieved of its obligations to Customer under this Agreement.

## 13. TERM AND TERMINATION

### 13.1 Term

This Agreement applies to each of the Products and Services from the effective date of the Sales Order until the expiration of the applicable Licence Term or the term for Professional Services, unless terminated earlier under this Agreement.

### 13.2 Termination for Cause

- (A) **Material Breach by Either Party.** If either Party commits a material breach of this Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate this Agreement, in whole or in part.
- (B) **Other Breaches.** Adobe may terminate this Agreement, in whole or in part, immediately upon written notice to Customer if required by law or if Customer breaches section 4.3(D) of these General Terms.

### 13.3 Effect of Termination or Expiration.

- (A) Upon termination or expiration of this Agreement or any Licence Term for the Products and Services:
  - (1) the licences and associated rights to the Products and Services will immediately terminate;
  - (2) Customer must, at its expense: (a) remove and delete all copies of the On-premise Software and Distributed Code; and (b) remove all references and links to the Cloud Services from the Customer Sites. Some or all of the Products and Services may cease to operate without prior notice upon expiration or termination of the Licence Term; and
  - (3) Customer Data stored within the Cloud Services will be available to Customer for 30 days after the termination or expiration in the same format then available within the reporting interface(s), unless specified in the respective PSLT.
- (B) Customer will be liable for any fees for any Cloud Services that are still in use or which remain active after termination or expiration of this Agreement. These fees will be invoiced to Customer at the rate set out in the Sales Order.
- (C) If Adobe reasonably determines that Customer’s deployment of the Cloud Services is causing a material risk to the security or operations of Adobe, or any of its customers, or to the continued normal

operation of other Adobe customers (“**Deployment Risk**”), then Adobe may, at any time, upon written notice to Customer:

- (1) immediately suspend Customer’s access, in whole or in part, to the Cloud Services causing the Deployment Risk, until such Deployment Risk is resolved; or
- (2) as a final option, where Adobe has first used all commercially reasonable efforts to mitigate the Deployment Risk, Adobe may terminate the affected Cloud Services.

#### 13.4 Survival

The termination or expiration of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property ownership and permitted use, licence compliance, limitation of liability, privacy, usage information and the “General Provisions” section in these General Terms.

### 14. GENERAL PROVISIONS

14.1 **Assignment.** A Party may only assign or novate this Agreement, or otherwise deal with the benefit of it or a right under it, or purport to do so, with the prior written consent of the other Party (this consent not to be unreasonably withheld), except that:

- (A) Customer may, upon written notice to Adobe, assign or novate its rights and obligations under this Agreement in connection with a solvent reconstruction, rearrangement, amalgamation, or reorganisation of Customer or Customer’s business, but only if the assignment or novation does not expand the scope of the licence granted in the Products and Services, and provided that the assignee agrees in writing, for the benefit of Adobe, to assume all of Customer’s obligations under this Agreement.
- (B) Adobe may, upon written notice to Customer, assign or novate its rights and obligations under this Agreement in connection with a solvent reconstruction, rearrangement, amalgamation or reorganization of Adobe or Adobe’s business, or to any Affiliate of Adobe, or in connection with a sale or transfer of all or any part of its business.

Any (attempted) assignment in derogation of this section 14.1 (Assignment) will be null and void.

#### 14.2 Governing Law, Venue.

- (A) **Australia and New Zealand.** If Customer is resident in Australia or New Zealand, this Agreement is governed by and construed under the laws of the state of New South Wales, Australia without regard to its conflict of laws principles. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts in that state.
- (B) **India and Other Asian Countries.**
  - (1) **India.** If the Customer is resident in India, this Agreement (including the arbitration agreement contained in section 14.2(C)) is governed by and construed under the laws of India, without regard to its conflict of laws principles.
  - (2) **Other Asian Countries.** If Customer is resident in any country/region in Asia other than India, including a member state of the Association of Southeast Asian Nations (ASEAN), mainland China, Hong Kong, Macau, Taiwan, South Korea, Sri Lanka, Bangladesh, or Nepal, this Agreement (including the arbitration agreement contained in section 14.2(C)) is governed by and construed under the laws of Singapore, without regard to its conflict of laws principles.
- (C) **Arbitration for India and Other Asian Countries.** This sub-section (C) will apply to Customers resident in India and Other Asian Countries as set out in section 14.2(B)(1) and section 14.2(B)(2):
  - (1) any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“**SIAC**”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“**SIAC Rules**”) for the time being in force, which rules are deemed to be incorporated by reference in this clause.
  - (2) The seat of the arbitration will be Singapore.

- (3) The tribunal will consist of one arbitrator.
  - (4) The language of the arbitration will be English.
  - (5) Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement under the Contract (Rights of Third Parties) Act.
  - (6) Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the Parties.
- (D) If disputes arising out of or in connection with this Agreement are to be referred to arbitration at the same time as disputes arising out of or in connection with other agreements between the Parties or between Adobe and Customer's affiliates, which other agreements contain an arbitration section similar to section 14.2(C) above, the Parties will enter into an agreement (that includes Customer's affiliates, where applicable) to submit all of these disputes to a single arbitration proceeding in Singapore before a single arbitrator under the Rules of Arbitration of the Singapore International Arbitration Centre.
- (E) The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 14.3 **Force Majeure.** Neither Party is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent that performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labour action, fire, flood, earthquake, denial of service attacks and other malicious conduct, utility failures, power outages, or governmental acts, orders, or restrictions.
- 14.4 **Provisional Remedies/Injunctive Relief.** Actual or threatened breach of this Agreement may cause immediate or irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Notwithstanding any provision in this Agreement, either Party to this Agreement may request any judicial, administrative, or other authority in any jurisdiction to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, before the institution of or during legal or arbitration proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies.
- 14.5 **Notices.** Any notice given under this Agreement must be in writing by email to the following addresses (or addresses notified in writing by either Party): (A) to Adobe: [ContractNotifications@adobe.com](mailto:ContractNotifications@adobe.com); and (B) to Customer: at Customer's email address stated on the Sales Order, or if Customer's Sales Order is with an Adobe Partner, at Customer's registered address. A notice is taken to have been received by email 3 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.
- 14.6 **No Agency.** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties. No Party has authority to bind the other Party.
- 14.7 **Customer's Purchase Order.** Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Adobe (or any other party, such as an Adobe Partner) do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Adobe.
- 14.8 **Waiver, Modification.** Neither Party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
- 14.9 **Order of Precedence.** To the extent of any conflict or inconsistency, the following order of precedence will apply: the Sales Order, the Data Processing Addendum, the applicable PSLT, followed by the General Terms.
- 14.10 **Entire Agreement.** This Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter. Each Party acknowledges to the other that it has not been induced to enter into this Agreement by, nor has it relied upon, any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of, the other Party or any other person, except for those contained in this Agreement. Accordingly, to the extent permitted by law, each of the Parties acknowledges and agrees that (except in relation to fraudulent misrepresentations) the only remedy available to it in respect of the subject matter of this Agreement will be for breach of contract under the terms of this Agreement and it will have no right of action against any other Party in respect of any other representation, promise, assurance, warranty or undertaking.

- 14.11 **Counterpart.** This Agreement (or a component) may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitutes the same agreement. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.
- 14.12 **Severability.** If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the term and this Agreement will continue in full force and effect.
- 14.13 **Trade Sanctions and Export Control Compliance.** The Products and Services, and Customer's use of them, are subject to the export controls and sanctions of the United States and other jurisdictions, which may prohibit Adobe from providing the Products and Services to Customer. Customer is responsible for compliance related to Customer's use of the Products and Services under these laws.
- 14.14 **Anti-Bribery and Anti-Corruption.** Each Party will comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, including but not limited to, the U.S. Foreign Corrupt Practices Act. The Parties represent that they maintain procedures to ensure compliance with anti-bribery and anti-corruption laws.
- 14.15 **Adobe Partner Transactions.** If Customer orders Products and Services from an Adobe Partner under a Sales Order with the Adobe Partner ("**Customer Order**"): (A) the terms of this Agreement apply to Customer's use of the Products and Services; and (B) the Adobe Partner is solely responsible for any variations or inconsistencies between the Customer Order and the order between the Adobe Partner and Adobe for the transaction. If Customer does not accept the terms of this Agreement, then Customer must not use or must immediately cease using the relevant Products and Services.
- 14.16 **Language.** This Agreement is prepared and is executed in the English language only. If any courtesy translation of this Agreement is made available to Customer, the English language version will prevail in all respects, and the courtesy translation will not be binding and will have no effect. If there is any conflict or inconsistency between the English language version of this Agreement and any courtesy translation, the English language version and interpretation will prevail.

## SCHEDULE A TO GENERAL TERMS: DEFINITIONS

1. **“Adobe”** means one or more of the following:
  - 1.1 If the Products and Services are licensed in the United States (including its territories, possessions, and military bases, wherever located), Canada, or Mexico: Adobe Inc., (located in San Jose, California).
  - 1.2 If the Products and Services are licensed in Australia, Adobe Systems Software Ireland Limited (located in Ireland), in its capacity as authorised agent for Adobe Systems Pty Ltd.
  - 1.3 If the Products and Services are licensed in any other country(ies): Adobe Systems Software Ireland Limited (located in Ireland).
2. **“Adobe Partner”** means a person that is appointed by Adobe to process orders from end users, or is a reseller of Products and Services to end users.
3. **“Adobe Technology”** means technology owned by Adobe or licensed to Adobe by a third party (including the Products and Services, Reports, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world), and feedback made to Adobe that is incorporated into any of the foregoing (which are hereby irrevocably assigned to Adobe), as well as any of the modifications, or extensions of the above, whenever or wherever developed.
4. **“Affiliate”** means, for a Party, any person that controls, is controlled by, or is under common control with, the Party, where “control” means the direct or indirect power to direct the affairs of a person through voting power, economic or contractual interest, or otherwise.
5. **“Agreement”** means these General Terms, the applicable Product Specific Licensing Terms, the Sales Order, and the Data Processing Addendum.
6. **“Claim”** means a claim, action, complaint, or legal regulatory body, administrative or judicial proceeding filed against a Party.
7. **“Cloud Services”** means the On-demand Services and/or the Managed Services.
8. **“Computer”** means a virtual or physical device for storing or processing data, such as servers, desktop computers, laptops, mobile devices, and hardware products. Where a device contains more than one virtual environment (including virtual machines and virtual processors), each virtual environment will be counted as a separate Computer.
9. **“Confidential Information”** means any non-public or proprietary information about a disclosing Party’s business-related technical, commercial, financial, employee, or planning information that is disclosed to the other Party in connection with their business relationship, and (A) is identified in writing as confidential at the time of disclosure; or (B) is by its nature confidential or the receiving Party knows, or should reasonably know, is confidential. Any Adobe Technology and the terms and conditions of this Agreement shall be deemed to be Confidential Information of Adobe, and all Customer Data will be deemed Confidential Information of Customer. “Confidential Information” does not include information that: (1) has become public knowledge through no fault of the receiving Party; (2) was known to the receiving Party, free of any confidentiality obligations, prior to disclosure by the disclosing Party; (3) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; (4) is independently developed by the receiving Party without the use of Confidential Information.
10. **“Customer”** means the person identified in the Sales Order as “Customer” or otherwise identified in the Sales Order as the end-user customer.
11. **“Customer Data”** means any (1) information or (2) material, such as audio, video, text, or image that are imported into the Cloud Services by or on behalf of Customer from Customer’s internal data stores, third-party data providers, or is collected via the Distributed Code, and is used in connection with Customer’s use of the Products and Services. Customer Data includes “Customer Content” if referenced in the Agreement.
12. **“Customer Site”** means any current or future website or application that is owned and operated by Customer or is hosted or operated by a third party or Adobe on Customer's behalf, and which contains a privacy policy or terms of use governing data collection practices that Customer controls.
13. **“Data Privacy Claim”** means a Claim arising from: (A) either Party’s failure to comply with the Data Processing Addendum; or (B) Customer’s failure to comply with section 4.4 (Third Party Providers); or Customer’s terms of use and privacy policy.

14. **“Data Processing Addendum”** or **“DPA”** means the Data Processing Addendum found at <https://www.adobe.com/au/legal/terms/enterprise-licensing/data-protection.html>, incorporated by reference, except where explicitly agreed otherwise between the Parties.
15. **“Data Protection Laws”** means any applicable privacy and data protection laws, regulations, and rules.
16. **“Distributed Code”** means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by Adobe for Customer to deploy and as required for use of the applicable Cloud Services.
17. **“Documentation”** means the applicable technical specification and usage documentation for the Products and Services as such materials are made generally available on [www.adobe.com](http://www.adobe.com). “Documentation” does not include any third party content posted to <https://www.adobe.com> or content published in user forums hosted or moderated by Adobe.
18. **“Indemnified Party”** means (A) Customer when Adobe is the Indemnifying Party and (B) Adobe when Customer is the Indemnifying Party.
19. **“Indemnified Technology”** means the Cloud Services or On-premise Software (as applicable), paid for by Customer.
20. **“Indemnifying Party”** means: (A) Adobe with respect to Claims (1) arising from Adobe’s failure to comply with the applicable Data Processing Addendum; or (2) arising under section 8.2 (Intellectual Property Claims); and (B) Customer with respect to Claims arising from Customer’s failure to comply with (1) the applicable Data Processing Addendum; (2) section 4.4 (Third Party Providers); or (3) Customer’s terms of use and privacy policy.
21. **“Licence Term”** means the earlier of the duration of the licence for the Products and Services, as stated in the Sales Order, or any shorter term arising from a termination or expiration of this Agreement.
22. **“Managed Services”** means the technology services hosted by or on behalf of Adobe and provided to Customer as a dedicated instance, as set out in the Sales Order.
23. **“Non-Excludable Provision”** has the meaning given to it in section 10.4 of these General Terms.
24. **“On-demand Services”** means the technology services hosted by or on behalf of Adobe and provided to Customer as a shared instance, as set out in the Sales Order.
25. **“On-premise Software”** means the Adobe software that is deployed by or on behalf of Customer on hardware designated by Customer, as set out in the Sales Order.
26. **“Party”** or **“Parties”** means Adobe, Customer, or both, as applicable.
27. **“Personal Data”** is given the meaning under the relevant applicable privacy or data protection laws relating to this term or any similar term (such as “personal information” or “personally identifiable information”) used in the applicable laws, or where no such laws apply, means any information that by itself or when combined with other information (such as telephone number, e-mail address, precise real-time GPS location, and government-issued identification number) can be used by Adobe to identify a specific natural person.
28. **“Products and Services”** means the On-premise Software, Cloud Services, or Professional Services, as set out in the Sales Order.
29. **“Product Specific Licensing Terms”** or **“PSLT”** means the Product Specific Licensing Terms document(s) that describe(s) the additional licensing terms for specific Products and Services.
30. **“Professional Services”** means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the Sales Order.
31. **“Report”** means any graphical or numerical display of Customer Data that contains Adobe’s proprietary design, look and feel that is generated by the Cloud Services.
32. **“Sales Order”** means the sales order form, statement of work, or other written document for the Products and Services that is either (A) executed between Adobe and Customer; or (B) if no such documents are executed between Adobe and Customer, and Customer is purchasing through an Adobe Partner, executed between Customer and the Adobe Partner.
33. **“Sensitive Personal Data”** means an individual’s financial information, sexual preferences, medical or health information protected under any health data protection laws, biometric data (for purposes of uniquely identifying an individual), personal information of children protected under any child protection laws and any additional types of information included within this term or any similar term (such as “sensitive personal information” or “special categories of personal information”) as used in applicable data protection or privacy laws.

**34. “User”** means an individual (either an employee or temporary worker of Customer) who may use or access the Products and Services on behalf of Customer.