



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 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 expiry will be immediately due and payable. Customer must provide a detailed remittance advice with each payment to Adobe via email to 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, Adobe will send Customer a reminder notice. If Customer fails to pay within 15 days of the date of the reminder notice of Customer's failure to pay, 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 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 any applicable services tax or value added tax to the appropriate tax authority.
 - (2) If Customer is located in any other country, Adobe will invoice Customer for any applicable taxes, and Customer must pay these taxes. Where applicable, Customer must provide a tax-exemption claim to Adobe before placing an order.
 - (3) If Customer is required to withhold income taxes from its payment to Adobe, Customer agrees to send Adobe an official tax receipt within 60 days of payment to Adobe. All withholding tax receipts must be emailed in a PDF format to Adobe Systems Software Ireland Limited at credit-ir@adobe.com, and the original certificate mailed 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, if applicable, the date that Adobe delivers the tangible media (e.g., CD or DVD) containing the On-premise Software FCA (Adobe's warehouse) (INCOTERMS 2010). On-demand Services and Managed Services are deemed to be delivered and accepted on the Licence Term start date.

4. LICENCE AND RESTRICTIONS

4.1 **Licence Grant for On-demand Services and Managed Services.** If Customer purchases On-demand Services or Managed Services, Adobe grants Customer, during the Licence Term, a non-transferable and non-exclusive licence to:

- (A) permit Users to access the On-demand Services or Managed Services, through the applicable interfaces;
- (B) install, implement, and use the Distributed Code on Customer Sites; and
- (C) develop and test Customer Customizations (as defined in the PSLT for the applicable Managed Services) to evaluate potential configurations of the Managed Services,

in accordance with the terms of this Agreement and solely in connection with Customer's use of the On-demand Services or Managed Services for its internal operations. 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. Customer must not disclose its login IDs and passwords, and is responsible for unauthorized access to its login IDs and passwords. Customer must not allow the use of the same login ID simultaneously by two or more Users.

4.2 **Licence Grant for On-premise Software.** If Customer purchases On-premise Software, Adobe grants Customer, during the Licence Term, a non-exclusive and non-transferable licence to:

- (A) install and use the On-premise Software on Computers for its internal operations, for the platforms and in the 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 these 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 subsection means that the backup copies are completely disconnected from any use environment and not receiving automatic data updates, and these backup copies require a manual activation process to pick up the use environment load during the failure of the primary copy, in accordance with the terms of this Agreement.

4.3 **Licence to Documentation.** Subject to Customer’s compliance with the terms of this Agreement, Customer may make and distribute copies of the Documentation for use by Users in connection with use of the Products and Services under this Agreement, but no more than the amount reasonably necessary. Any permitted copy of the Documentation must contain the same copyright and other proprietary notices that appear in the Documentation.

4.4 **Licence Restrictions.** Except as permitted under this Agreement, Customer must not:

- (A) use the Products and Services (1) in violation of any applicable law or in connection with unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, 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) attempt to interact with the operating system underlying the On-demand Services or Managed Services, or modify, create derivative works of, adapt, translate, reverse engineer, decompile, or otherwise attempt to discover the source code in, any Adobe Technology. 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;
- (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; or
- (G) unbundle any components of the On-premise Software for use on different Computers, because the On-premise Software is designed and provided to Customer, for use as a single product.

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

4.5 **Update Requirements for On-premise Software.** Customer must possess a valid licence to the On-premise Software to purchase an upgrade to that On-premise Software. All upgrades and updates are provided to Customer on a licence-exchange basis. Upon installing an upgrade or update, Customer may only continue to use a simultaneous installation of the previous version of the On-premise Software for a reasonable period of time (not to exceed 180 days) to assist Customer in the transition to the upgrade or update. After this period, Customer must uninstall and cease using the previous version. This limited right of simultaneous installation and use does not constitute an increase in the scope of use granted to Customer under this Agreement. The upgrades and updates constitute On-premise Software, and are subject to the terms of this Agreement and the then-current version of the applicable PSLT.

4.6 **Third Party Providers.** If Customer uses certain features of the On-demand Services or Managed Services in conjunction with third party data, products, services, and platforms (e.g. social media platforms, media partners, wireless carriers, or device operating systems), then Customer is responsible for complying with the terms and conditions required by such third party providers.

4.7 **Licence Grant from Customer.** Regarding On-demand Services or Managed Services:

- (A) Customer owns or has a valid licence to the Customer Data and Customer Content, subject to Adobe’s underlying intellectual property in the Adobe Technology;
- (B) during the Licence Term, Customer grants Adobe and its Affiliates a non-exclusive, worldwide, royalty-free licence to use, copy, transmit, sub-license, index, store, and display Customer Data and Customer Content, solely for the purposes stated in section 8.1 (Warranty); and

- (C) Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free licence to use, copy, transmit, sub-license, index, model, aggregate (including combination with similar data of other customers of Adobe or its Affiliates), publish, display, and distribute any anonymous information derived from Customer Data, such as web browser, screen resolution, and mobile device-type information.

5. THIRD-PARTY ACCESS

- 5.1 **Use by Affiliates.** Customer may allow its Affiliates to use and access the Products and Services, only if and as specified in, a Sales Order.
- 5.2 **Outsourcing and Third-Party Access.** Customer may allow a third-party contractor to operate, use, or access the Products and Services on Customer's behalf, but only if:
 - (A) upon Adobe's request, Customer provides Adobe with the identity of the contractor and the purpose for the contractor's use or access to the Products and Services; and
 - (B) the use or access by the contractor is only for Customer's internal operations.
- 5.3 **Customer Responsibility.** If Customer allows any person to operate, use, or access the Products and Services, including under sections 5.1 (Use by Affiliates) or 5.2 (Outsourcing and Third-Party Access), Customer must ensure that such person complies with the terms of this Agreement.
- 5.4 **No Additional Rights.** For clarity, the rights granted under this section 5 (Third-Party Access) do not modify the Licence Metric or increase the number of licences granted under this Agreement.

6. CUSTOMER CONTENT AND DATA

- 6.1 **Monitoring.** Customer will: (A) implement a process through which infringing, abusive, or otherwise unlawful content ("**Unlawful Content**") can be reported to Customer; (B) promptly remove any Unlawful Content from Customer Site(s) in accordance with applicable laws and regulations; and (C) promptly notify Adobe if Customer becomes aware of a possible violation regarding any Customer Content that is uploaded to the On-demand Services or Managed Services.
- 6.2 **Consumer-Generated Content.** If content generated by consumers of Customer is uploaded to Adobe's On-demand Services and Managed Services, the following terms apply:
 - (A) Adobe does not review all content uploaded to Adobe On-demand Services and Managed 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 behavior (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 On-demand Services and Managed Services; (1) when it is required or authorized by law (e.g. when Adobe receives a valid subpoena or search warrant); or (2) when Adobe, in its reasonable discretion, believes it is necessary to protect the rights, property, or personal safety of Adobe, consumers, or the public.
- 6.3 **Responsibility.** Customer retains complete control over the installation and configuration of Distributed Code, each Customer Site, and all Customer Content. Customer must ensure that all Customer Sites used with the On-demand Services or Managed Services, and all Customer Data and Customer Content: (A) comply with all applicable laws, rules, guidelines, and codes (including giving any notifications, obtaining any consents, and making any required disclosures); and (B) do not infringe any person's rights. Customer must ensure that the Customer Data and Customer Content provided to Adobe is accurate. Adobe may suspend services or remove Customer Data or Customer Content that violates these requirements.
- 6.4 **Data Retention.** Regarding On-demand 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.
- 6.5 **Customer's Users.** 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) applicable privacy and data protection laws, regulations, rules, guidelines, and codes. Customer must ensure it does not directly or indirectly cause Adobe or third-party providers that operate

servers or host data for the On-demand Services or Managed Services, as applicable, to breach any laws, regulations, rules, guidelines, and codes in the collection, storage, access, transfer, use or disclosure of Personal Data arising from or in connection with this Agreement. Where required under applicable privacy and data protection laws, regulations, rules, guidelines, or codes, 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 On-demand Services or Managed 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.
- 6.6 **Sensitive Personal Data.** Customer agrees not to use the On-demand Services or Managed Services to collect, process, or store any Sensitive Personal Data of its employees, customers, partners, site visitors, or any third party. Customer agrees not to transmit, disclose, or make available Sensitive Personal Data to Adobe or Adobe's third-party providers.
- 6.7 **Professional Services.** For Professional Services, Customer will not provide access to Personal Data unless specifically agreed to in writing.

7. CONFIDENTIALITY

- 7.1 **Obligation of Confidentiality.** The receiving Party will keep all Confidential Information of the disclosing Party confidential and will not reproduce, disseminate, or disclose Confidential Information to any person, except as set out in section 7.2. The receiving Party agrees that any disclosure to its employees and authorized representatives (i.e., temporary employees, consultants, solicitors, accountants, insurers, and contractors) will be limited to those employees and authorized representatives who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as those in this section 7 (Confidentiality).
- 7.2 **Permitted Disclosure.** The receiving Party may disclose Confidential Information of the disclosing Party:
- (A) as approved in a writing signed by the disclosing Party;
 - (B) as necessary to comply with any law (including statutory reporting and auditing requirements) or valid order of a court or other governmental body; or
 - (C) as necessary to establish the rights of either Party,
- but in the case of (B) and (C), the receiving Party must promptly notify the disclosing Party of the details of the required disclosure and give the disclosing Party all assistance reasonably required by Discloser to enable Discloser to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.
- 7.3 **Responsibility for Representatives and Affiliates.** 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.

8. SECURITY MEASURES

- 8.1 **Warranty.** Adobe warrants that it will only store and use Customer Data and Customer Content:
- (A) to the extent necessary to provide the On-Demand Services or Managed Services and Reports to Customer (and any back-ups for those services);
 - (B) to the extent necessary to perform its obligations or enforce its rights under this Agreement; and
 - (C) where required or authorised by law,
- and not for any other purpose without the specific prior consent of Customer.
- 8.2 **Security Measures.** Adobe has established and implemented reasonable and appropriate information security practices regarding the protection of Customer Data as required by law, including administrative, technical and physical security processes.

8.3 **Security Claims.** Adobe will, at its expense, defend or settle any third-party Claim against Customer caused by Adobe's failure to comply with section 8.2 (Security Measures), to the extent such failure results in a third party's confirmed, unauthorized acquisition of Customer Data provided by Customer to Adobe in connection with the Agreement ("**Security Claim**"). In addition, Adobe will pay (in relation to a Security Claim): (A) any Adobe-negotiated settlement amounts (to the extent Adobe is permitted to settle); or (B) any damages finally awarded by a court, to the extent directly attributable to Adobe's non-compliance.

8.4 **Conditions.**

(A) Adobe will have no liability for any Security Claim to the extent such claim arises from any of the Customer matters specified in section 11.1 (Customer's Obligations).

(B) Adobe's obligations under section 8.3 (Security Claims) are conditioned upon Customer (to the extent permitted by applicable law):

- (1) promptly notifying Adobe of any Claim in writing;
- (2) cooperating with Adobe in the defense and settlement of the Claim;
- (3) granting Adobe sole control of (and authority over) the defense and settlement of the Claim; and
- (4) refraining from making any admissions about the Claim without Adobe's prior written consent.

8.5 **Sole and Exclusive Remedy.** To the extent permitted by law (and subject to sections 12 and 13), the remedies in section 8.3 (Security Claims) are Customer's sole and exclusive remedies, and set out Adobe's sole liability (including in negligence), regarding the subject matter giving rise to any Security Claim.

9. TERM AND TERMINATION

9.1 Term

This Agreement applies to each of the Products and Services from the Effective Date until the expiry of the applicable Licence Term or the term for Professional Services, unless terminated earlier under this Agreement.

9.2 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) **Breach of Confidentiality Provisions.** If a Party is in breach of any confidentiality provisions of this Agreement, the non-breaching Party may terminate this Agreement, in whole or in part, immediately by giving the breaching Party written notice of the breach.

(C) **Insolvency.** A Party may terminate this Agreement immediately upon notice to the other Party if the latter is subject to any of the following events (or events like or analogous to the following): (1) insolvency; (2) any form of voluntary or involuntary insolvency administration or liquidation; (3) entering into a scheme or voluntary arrangement with its creditors for partial discharge of indebtedness; or (4) disbanded or dissolved under regulatory action or decree.

(D) **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 4.4(D) of these General Terms.

9.3 Effect of Termination or Expiration.

(A) Upon termination or expiration of this Agreement or any Licence Term for the Products and Services:

- (1) the licence and associated rights for 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 On-demand Services or Managed 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 and Customer Content stored within the On-demand Services and Managed Services will be available to Customer for 30 days after the termination or expiration in the format then available within the reporting interface(s).
- (B) Any continued use of the Products and Services after termination or expiration of this Agreement constitutes a breach of this Agreement. Customer will be liable for any fees for any Products and Services that remain active after the termination or expiration. 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 On-demand Services or Managed Services contains a material risk to Adobe Technology, Adobe's Confidential Information, the security or business operations of Adobe, any customer of Adobe, or to the continued normal operation of other Adobe customers, then Adobe may, at any time, upon written notice to Customer, immediately terminate or suspend Customer's access, in whole or in part, to the On-demand Services or Managed Services, until such risk is resolved. Adobe will not suspend or terminate access without first using commercially reasonable efforts to mitigate these risks.

9.4 Survival

The termination or expiry of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiry, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property, licence compliance, limitation of liability, privacy, content monitoring, and the "General Provisions" section in these General Terms.

10. THIRD PARTY INTELLECTUAL PROPERTY CLAIMS

- 10.1 **Adobe's Obligations.** Adobe will defend, at its expense, any third-party Claim against Customer during the Licence Term to the extent the Claim alleges that (A) the Indemnified Technology directly infringes the third party's patent, copyright, or trade mark; or that (B) 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).
- 10.2 **Adobe's Response.** In the defence or settlement of any Infringement Claim, Adobe may, at its sole option and expense:
 - (A) procure for Customer a licence to continue using the Products and Services under the terms of this Agreement;
 - (B) replace or modify the allegedly infringing Indemnified Technology to avoid the infringement; or
 - (C) terminate Customer's licence and access to the Indemnified Technology (or its infringing part) and refund:
 - (1) in the case of Indemnified Technology licensed for a limited term, any prepaid unused fees as of the date of termination; or
 - (2) 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 purges and destroys all copies of the On-premise Software (and any related materials) and Distributed Codes, as applicable, from all computer systems on which it was stored.
- 10.3 **Conditions to Indemnification.** Adobe will have no liability for any Infringement Claim:
 - (A) that arises from any:
 - (1) use of the Indemnified Technology in violation of this Agreement;
 - (2) modification of the Indemnified Technology by anyone other than Adobe;
 - (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; or
- (B) if Customer fails to:
 - (1) notify Adobe in writing of the Infringement Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Adobe is prejudiced by this failure;
 - (2) provide Adobe with reasonable assistance requested by Adobe for the defence or settlement (as applicable) of the Infringement Claim;
 - (3) provide Adobe with the exclusive right to control and the authority to settle the Infringement Claim; or
 - (4) refrain from making admissions about the Infringement Claim without Adobe's prior written consent.

10.4 **Sole and Exclusive Remedy.** The remedies in this section 10 (Third Party Intellectual Property Claims) are Customer's sole and exclusive remedies and Adobe's sole liability regarding the subject matter giving rise to any Infringement Claim.

11. OTHER CLAIMS

11.1 **Customer's Obligations.** Customer will, at its expense, defend or settle any third-party Claim against Adobe, to the extent it arises from:

- (A) Adobe's compliance with Customer's written notification, approval or direction;
- (B) modification of the On-demand Services or Managed Services by anyone other than Adobe or a party authorized in writing by Adobe to make such modifications;
- (C) a vulnerability in a previous version of the On-demand Services or Managed Services, if such vulnerability would have been mitigated or remedied by a later release made available to Customer, if Customer failed, for any reason, to use such later release;
- (D) any use of the On-demand Services or Managed Services for purposes not contemplated by this Agreement or the applicable Documentation;
- (E) Customer's failure to comply with Customer's data privacy policy, the applicable data protection laws, guidelines, regulations, codes and rules, and their privacy obligations contained in this Agreement; or
- (F) any Customer Customization (as defined in the applicable PSLT), Customer Content, or Customer Data (excluding claims arising from Adobe's failure to comply with Section 8.2 (Security Measures)); or
- (G) Customer's breach of section 4.6 (Third Party Providers).

Section 12 (Limitation of Liability) does not apply to Customer's liability or obligations under this section.

11.2 **Conditions.** Customer's obligations under section 11.1 (Customer Obligations) are conditioned upon Adobe (to the extent permitted by applicable law):

- (A) promptly notifying Customer of any Claim in writing;
- (B) cooperating with Customer in the defense and settlement of the Claim;
- (C) granting Customer sole control of (and authority over) the defense and settlement of the Claim; and
- (D) refraining from making any admissions about the Claim without Customer's prior written consent.

11.3 **Sole and Exclusive Remedy.** The remedies in section 11.1 (Customer Obligations) are the sole and exclusive remedies of Adobe and the sole liability of the Customer regarding the subject matter giving rise to any such Claim.

12. LIMITATION OF LIABILITY

12.1 Limitation of Damages

- (A) Subject to section 12.1(D) 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; loss of, damage to or corruption of data; 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.
- (B) Subject to section 12.1(D) and to the maximum extent permitted by law, the maximum aggregate liability of each Party for each and all Claims (individually and together) under or relating to this Agreement or its subject matter is limited to an amount equal to the aggregate of the fees that must be paid by Customer under this Agreement during the 12 months before the initial Claim.
- (C) Sections 12.1(A) and 12.1(B) (Limitation of Liability) of these General Terms:
 - (1) apply regardless of the form or source of Claim or loss, whether the Claim or loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or loss; and
 - (2) do not apply in any breach of section 7 (Confidentiality), Customer's 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.
- (D) Nothing in this Agreement will limit or exclude either Party's liability for: (1) death or personal injury resulting from a Party's negligence; (2) fraudulent misrepresentation; or (3) loss or damage for which liability cannot be excluded or limited by law.

13. WARRANTIES

- 13.1 **Limited Warranty and Remedy for On-demand Services and Managed Services.** Adobe warrants that the On-demand Services and Managed Services, as delivered to Customer, will substantially conform to the applicable Documentation during the Licence Term, to the extent that the On-demand Services and Managed Services constitute Indemnified Technology. Customer must notify Adobe of a claim under this warranty within 30 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 On-demand Service or Managed Service and a refund of any pre-paid unused fees for the applicable On-demand Service or Managed Service.
- 13.2 **Limited Warranty and Remedies for On-premise Software.** Adobe warrants that the On-premise Software will substantially conform to the applicable Documentation for 90 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 90-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 the fees Customer paid for the On-premise Software.
- 13.3 **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.

- 13.4 **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.
- 13.5 **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 13.1 or 13.2 of these General Terms, Customer must call the Adobe Customer Support Department at 1800 614 863.
- 13.6 **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.

14. LICENCE COMPLIANCE

- 14.1 Adobe may, at its expense and no more than once every 12 months, appoint its own personnel or an independent third party (or both) to verify that Customer’s use, installation, or 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.
- 14.2 For On-premise Software and any Distributed Code, 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 at the direction of Customer, including installation or deployment on servers owned by Customer or provided by third parties; (B) all valid purchase documentation for all On-premise Software and Distributed Code; and (C) any information reasonably requested by Adobe.
- 14.3 Any verification may include an onsite audit conducted at Customer’s relevant places of business upon 7 days’ prior notice, during regular business hours, and will not unreasonably interfere with Customer’s business activities.
- 14.4 If the verification shows that Customer, its Affiliates or third-party contractors of Customer or its Affiliates are deploying, installing or 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 any way not permitted under this Agreement, so that additional fees apply, Customer must pay the additional licence fees and any applicable related maintenance and support 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.

15. SPECIFIC PROVISIONS FOR PROFESSIONAL SERVICES

15.1 Licence to Deliverables.

- (A) Without limiting or modifying any licence granted to Customer for the On-premise Software, On-demand Services or Managed 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 for Customer’s direct beneficial business purposes.

- (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 waives and assigns to Adobe all rights, 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.
- 15.2 **Employment Taxes and Obligations.** Adobe is responsible for all taxes and any employment obligations that may arise from its employment of personnel and contractors to perform the Professional Services.
- 15.3 **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 delivery of the Professional Service. To the extent permitted by law, Customer’s sole and exclusive remedy for breach of this warranty and Adobe’s sole liability for this warranty will be re-performance of the relevant Professional Service.
- 15.4 **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.

16. GENERAL PROVISIONS

- 16.1 **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.
- (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 will be null and void.

16.2 **Governing Law, Venue.**

- (A) 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) If Customer is resident in any other country, including a member state of the Association of Southeast Asian Nations (ASEAN), mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C., the Republic of Korea, India, Sri Lanka, Bangladesh, or Nepal:
- (1) This Agreement (including the arbitration agreement contained in this section 16.2(B)) is governed by and construed under the laws of Singapore, without regard to its conflict of laws principles. Except as expressly set out in this Agreement, 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.
 - (2) 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 in Singapore under the Rules of Arbitration of the Singapore International Arbitration Centre (SIAC) for the time being in force, which rules are deemed to be incorporated by reference in this section 16.2(B).
 - (3) There will be one arbitrator, selected jointly by the 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.

- (4) The arbitration will be conducted in the English language, but any witness whose native language is not English may give testimony in the witness's native language, with simultaneous translation into English (at the expense of the Party presenting the witness).
- (5) Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the Parties.
- (C) 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 16.2(B) 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.
- (D) The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 16.3 **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, failure of third-party providers, denial of service attacks and other malicious conduct, utility failures, power outages, or governmental acts, orders, or restrictions.
- 16.4 **Provisional Remedies.** 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.
- 16.5 **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; 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.
- 16.6 **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.
- 16.7 **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.
- 16.8 **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.
- 16.9 **Order of Precedence.** If there is any inconsistency between any parts of this Agreement, to the extent of the inconsistency, the Sales Order will prevail over the applicable PSLT, and the PSLT will prevail over the General Terms.
- 16.10 **Entire Agreement.** This Agreement contains the entire understanding of the Parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda, proposals or commitments concerning the subject matter of this Agreement (whether involving a Party or its Affiliates) are merged in and superseded by this Agreement and are of no effect. No Party is liable to the other Party in respect of those matters. Each Party acknowledges that it has not relied on any of those matters, and that it has entered into this Agreement solely in reliance on the express terms, representations and warranties set out in this Agreement. No oral explanation or information provided by any Party to another: (A) affects the meaning or interpretation of this Agreement; or (B) constitutes any collateral agreement, warranty or understanding between any of the Parties.
- 16.11 **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.

- 16.12 **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.
- 16.13 **Trade Rules.** Customer acknowledges that the Products and Services may be subject to the trade control laws and regulations of the United States and other national governments, and Customer will comply with them.
- 16.14 **Adobe Partner Transactions.** If Customer orders Products and Services from an Adobe Partner under a Sales Order with the Adobe Partner ("**Partner Sales Order**"): (A) the terms of this Agreement apply to Customer's use of the Products and Services; (B) the Enterprise Licensing Terms (or any part of it) prevails over any inconsistent provisions in the Partner Sales Order; and (C) the Adobe Partner is solely responsible for any variations or inconsistencies between the Partner Sales 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.
- 16.15 **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 both of the following:
 - 1.1 If the Products and Services are licensed in the United States, Canada, Mexico, United States territories and possessions, and United States military bases wherever located: Adobe Systems Incorporated, located in San Jose, California.
 - 1.2 If the Products and Services are licensed in all other countries:
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 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 suggestions made to Adobe that are incorporated into any of the foregoing (which will be deemed assigned to Adobe), as well as any of the derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed.
4. **“Affiliate”** means, for a Party, any other person 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 person through at least 50% of the shares, voting rights, participation, or economic interest in this person.
5. **“Agreement”** means these General Terms, the applicable Product Specific Licensing Terms, and the Sales Order.
6. **“Claim”** means a claim, action (including a regulatory action) or legal proceeding made against a Party.
7. **“Computer”** means a virtual or physical device for storing or processing data, such as servers, desktop computers, laptops, mobile devices, Internet-connected 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.
8. **“Confidential Information”** means non-public or proprietary information about a disclosing Party’s business-related technical, commercial, financial, employee, or planning information that is disclosed by the disclosing Party to the other Party in connection with this Agreement, and is (1) identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (2) disclosed in non-tangible form, identified as confidential at the time of disclosure, summarized in a writing labeled as “confidential”, and delivered to the receiving Party within 15 days after disclosure. “Confidential Information” does not include information that: (a) has become public knowledge through no fault of the receiving Party; (b) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (c) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (d) is independently developed by the receiving Party without use of Confidential Information.
9. **“Customer”** means the person identified in the Sales Order as “Customer” or otherwise identified in the Sales Order as the end user customer.
10. **“Customer Content”** means any material, such as audio, video, text, or image that is provided to Adobe by Customer or on Customer’s behalf, in connection with Customer’s use of the On-demand Services or Managed Services for content delivery, digital publishing, targeted advertising, or indexing.
11. **“Customer Data”** means any information collected from the Customer Site or Customer’s search engine providers via the Distributed Code and any information that Customer imports into the On-demand Services or Managed Services from its internal data stores or other sources not supplied by Adobe.
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. **“Distributed Code”** means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by Adobe for use of the On-demand Services or Managed Services.

14. **“Documentation”** means the technical user manuals made generally available by Adobe that accompanies the Products and Services and the product descriptions of the Products and Services published by Adobe on <https://helpx.adobe.com/product-descriptions.html>, which may be updated from time to time. “Documentation” does not include any forum or content by any third party.
15. **“Effective Date”** means the effective date stated in the Sales Order.
16. **“Enterprise Licensing Terms”** means these General Terms and the applicable PSLTs.
17. **“Indemnified Technology”** means On-demand Services, Managed Services or On-premise Software (as applicable), paid for by Customer.
18. **“Licence Metric”** means the per-unit metrics specified by Adobe concerning the licensed quantities in the Sales Order, to describe the scope of Customer’s licence to use the Products and Services. Unless the Agreement provides otherwise, the Licence Metrics are published in the Documentation at helpx.adobe.com.
19. **“Licence Term”** means the duration of the licence for the Products and Services, as stated in the Sales Order, or any shorter term arising from a termination of this Agreement.
20. **“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.
21. **“Non-Excludable Provision”** has the meaning given to it in section 13.4 of these General Terms.
22. **“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.
23. **“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.
24. **“Party”** means Adobe or Customer, as applicable.
25. **“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.
26. **“Products and Services”** means the On-premise Software, On-demand Services, Managed Services, or Professional Services, as set out in the Sales Order.
27. **“Product Specific Licensing Terms”** or **“PSLT”** means the Product Specific Licensing Terms document that describes the additional licensing terms for specific Products and Services.
28. **“Professional Services”** means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the Sales Order.
29. **“Report”** means any graphical or numerical display of Customer Data that contains Adobe’s proprietary design, look and feel that is generated by the On-demand Services or Managed Services and which Customer may use for Customer’s internal operations.
30. **“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.
31. **“Sensitive Personal Data”** is given the meaning under relevant privacy or data protection laws relating to this term or any similar term (such as “sensitive information” or “sensitive personal information”) used in the applicable laws, or where no such laws apply, means financial information (including financial account information), sexual preferences, medical or health information, and personal information of children protected under any child protection laws (such as the personal information defined under the US Children’s Online Privacy Protection Act).
32. **“User”** means an individual (either an employee or temporary worker of Customer) who may use or access the Products and Services.