



ADOBE - GENERAL TERMS (2013v1)

These General Terms (collectively with any exhibits and attachments) are entered into by and between Adobe and Customer as set forth in the Sales Order that expressly incorporates these General Terms. These terms will apply to the procurement of Products and Services as set forth in the applicable Sales Order(s).

1. General Definitions

- 1.1. **Adobe:** means the entity or entities identified in the signature block(s) of the Sales Order as “Adobe”.
- 1.2. **Adobe Technology:** means Adobe’s technology, including software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, toolkits, plug-ins (i.e.. software components that add specific functionality to a larger software application), objects and documentation (both printed and electronic), network designs, processes, know-how, methodologies, trade secrets and any related intellectual property rights throughout the world (whether owned by Adobe, a subsidiary or affiliate of Adobe, or licensed to Adobe by a third party) and also including any derivatives, modifications, improvements, enhancements or extensions thereto, regardless of when developed. Adobe Technology includes third party licensed materials incorporated into or provided with Adobe Technology.
- 1.3. **Affiliates:** means any corporation, company or other entity in which more than fifty percent (50%) of the voting shares or outstanding capital stock are owned or controlled, directly or indirectly, by a Party.
- 1.4. **Agreement:** means the applicable Sales Order any terms incorporated therein by reference including these General Terms (collectively with any exhibits and attachments), and the applicable Product Description and Metrics.
- 1.5. **Confidential Information:** means any information that is clearly identified in writing as confidential at the time of disclosure, and any written or oral information that, based on the substance and circumstances under which it was disclosed, a reasonable person would believe to be confidential. Confidential Information includes, but is not limited to, terms of this Agreement, customer data, product proposals, technological processes, product forecasts, trade secrets, pre-publication patent applications, product designs, license key, pricing information and rate cards, software and system designs, functionalities, know-how, technology specifications, source code, object code, graphic designs, report templates, proprietary financial, and personnel and sales information. Confidential Information also includes all copies, summaries and extracts of any Confidential Information. The restrictions on the receiving Party’s use and disclosure of disclosing Party’s Confidential Information will not apply to any Confidential Information which the receiving Party can demonstrate]: (i) is or becomes a part of the public domain without breach of this Agreement by the receiving Party; (ii) was rightfully in the receiving Party’s possession free of restriction prior to the disclosure by the Disclosing Party and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information.
- 1.6. **Customer:** means the entity or entities identified in the signature block of the Sales Order as “Customer”.
- 1.7. **Documentation:** For OnPremise Software, Documentation means the technical user manual describing the features and functionalities of the applicable OnPremise Software, as provided by Adobe and generally available in PDF format in the software or via adobe.com. If OnPremise Software does not have a technical user manual, Documentation will mean the description of the software contained in the Product Descriptions and Metrics applicable to the software. For OnDemand Services, Documentation will mean the description of the service contained in the Product Descriptions and Metrics applicable to such service. Documentation does not include any forums or content contributed by any third party.
- 1.8. **Effective Date:** means the effective date stated in the applicable Sales Order.
- 1.9. **Fees:** means the fees for the Products and Services set forth in the applicable Sales Order.



- 1.10. **Indemnified Technology:** means OnDemand Services (including Distributed Code) and OnPremise Software, as applicable, set forth in a Sales Order and paid for by Customer, but excluding sample code, SDKs, open source, trial or evaluation software, pre-release software, not-for-resale software, and software provided free of charge.
- 1.11. **License Metric:** means each of the per-unit metrics specified by Adobe in connection with the licensed quantities identified in the Sales Order to describe the scope of Customer's right to use the Products and Services.
- 1.12. **License Term:** means the duration of the license granted for particular OnDemand Services or OnPremise Software as set forth in the applicable Sales Order(s), unless earlier terminated pursuant to this Agreement.
- 1.13. **OnDemand Services:** means the enterprise solution(s) hosted by or on behalf of Adobe as the solution is set forth within the OnDemand Service section of the applicable Sales Order(s) and related Adobe Technology, as may be further described in the PDM.
- 1.14. **OnPremise Software:** means the distributed software as set forth within the OnPremise Software section of the applicable Sales Order and related Adobe Technology, as may be further described in the PDM.
- 1.15. **Party:** means Adobe or Customer as applicable.
- 1.16. **Products and Services:** means the OnPremise Software, OnDemand Services and Professional Services as set out on the applicable Sales Order.
- 1.17. **Product Description and Metrics (or PDM):** means the description and related use rights of the applicable products listed in the Sales Order.
- 1.18. **Professional Services:** means any consulting, training, implementation, and technical services provided to Customer, as set forth in the applicable Sales Order.
- 1.19. **Sales Order:** means the sales order form(s), statement(s) of work, or other ordering document(s) executed by the Parties which describe the Fees to be paid by Customer or its Affiliates, for the Products and Services to be delivered.

2. Payment and Fees

- 2.1. **Payments.** Customer will pay all Fees described in the Sales Order, in accordance with the payment terms found therein ("Fees").
- 2.2. **Failure to Pay.** If Customer fails to pay the amount due under a Sales Order or related invoice within thirty (30) days of notice by Adobe of Customer's failure to pay, Adobe reserves the right to terminate or suspend in whole or in part immediately at Adobe's discretion as applicable any license and access to Products and Services for which payment has not been received.
- 2.3. **Disputes.** If Customer believes in good faith that Adobe incorrectly billed Customer, Customer must contact Adobe in writing, within thirty (30) days of the applicable invoice, specifying the calculation error and the amount of the adjustment or credit requested. Unless Customer has notified Adobe of the dispute, Customer will reimburse Adobe for all reasonable costs and expenses incurred in collecting the overdue amounts.

3. **Delivery.** OnPremise Software will be deemed to be delivered and accepted on the date the software is made available for electronic download, or if applicable, on the date that tangible media (e.g., CD or DVD) is shipped FOB origin. OnDemand Services will be deemed to be delivered and accepted on the start date set forth in the Sales Order.

4. **Taxes.** Prices in the Sales Order do not include taxes. Taxes may be invoiced separately by Adobe, and Customer is responsible for payment of all applicable taxes. Customer must provide a tax exemption claim to Adobe before an invoice is issued. If Customer is required to withhold income taxes from its payment to Adobe, Customer agrees to send to Adobe an official tax receipt within sixty (60) days.

5. Confidentiality

- 5.1. **No Use or Disclosure.** The Parties agree to use commercially reasonable care (but in no case less care than it uses to protect its own Confidential Information) to prevent the disclosure of the disclosing Party's Confidential Information to any third party and will only use the disclosing Party's Confidential Information to fulfill its specific obligations set forth herein. Notwithstanding the foregoing, Customer may disclose Adobe's Confidential Information to an authorized user as necessary to support Customer's internal business operations



and Adobe may disclose Customer's Confidential Information to its third party suppliers solely to the extent necessary to perform Adobe's obligations under this Agreement; provided that in either case, the disclosing Party is required to have a non-disclosure agreement in place with third parties that protects Confidential Information against disclosure in a manner no less protective than this Agreement. Adobe may maintain archived copies of any audit results.

- 5.2. **Required Disclosure.** This Confidentiality section will not be construed to prohibit disclosure of Confidential Information to the extent that the disclosure is required by law or pursuant to a valid order of a court or other governmental authority ("Disclosure Order"); provided, however, that a Party in receipt of a Disclosure Order (the "Responding Party") will first have given, unless prohibited by law, sufficient and prompt written notice to the disclosing Party of the receipt of any Disclosure Order; and will have made a reasonable effort to limit the disclosure, including, in relevant cases obtaining a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued. Notwithstanding the foregoing obligation of the Responding Party, nothing in this Confidentiality section will limit or restrict the ability of the disclosing Party to act on its own behalf and at its own expense to prevent or limit the required disclosure of Confidential Information.

6. Term and Termination

- 6.1. **Term.** The provisions of this Agreement apply to each Product and Service beginning upon the Effective Date of the applicable Sales Order and continuing through the expiration of the applicable service or License Term stated on the Sales Order unless otherwise terminated as provided pursuant to this Agreement.
- 6.2. **Termination for Cause.** If either Party materially breaches this Agreement, the non-breaching Party may provide written notice to the breaching Party indicating (i) the nature and basis of the breach, with reference to the applicable provisions of this Agreement; and (ii) the non-breaching Party's intention to terminate all or a portion of the applicable Sales Order(s) related to the breach in accordance with this section. If the breach is not cured within thirty (30) days of the receipt of the written notice, the non-breaching Party can exercise its right to terminate immediately. Either Party may terminate the entire Agreement immediately upon written notice to the breaching Party if the other Party is in breach of the confidentiality provisions of this Agreement. Adobe may terminate the Agreement, in whole or in part, upon written notice to Customer if Customer is in breach of the "No Modifications, No Reverse Engineering" Section, or uses Products and Services beyond the scope of the license stated herein.
- 6.3. **Termination for Insolvency.** In the event Adobe receives notice that Customer is insolvent or fails to pay its obligations as they arise or upon any proceeding being commenced by or against Customer under any law providing relief to Customer, Adobe may terminate this Agreement immediately upon notice to Customer.
- 6.4. **Survival.** The following provisions of this Agreement will survive any termination or expiration of this Agreement: payment, confidentiality, taxes, compliance, survival, ownership, effect of termination, limitation of liability, privacy, and indemnification.

7. Intellectual Property

- 7.1. **Ownership.** Customer acknowledges and agrees that Adobe and its third party suppliers, as applicable, retain all right, title and interest in and to the Adobe Technology and all intellectual property rights embodied in or with respect to the Adobe Technology. Adobe reserves all rights not expressly granted to Customer herein. Customer will not limit Adobe, its Affiliates or its or their customers in any way from developing, using, licensing, distributing, modifying, or otherwise freely exploiting the Adobe Technology.
- 7.2. **No Modifications, No Reverse Engineering.** Customer will not modify, port, create derivative works of, adapt or translate the Products and Services. Customer will not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Products and Services delivered in object code. Notwithstanding the foregoing, decompiling the Products and Services delivered in object code is permitted solely to the extent the law governing this Agreement gives Customer the right to do so to obtain information necessary to render the decompiled technologies interoperable with other software.

8. Indemnification

- 8.1. **Adobe's Duty to Indemnify.** Adobe will defend any third party claim against Customer during the applicable License Term to the extent the claim alleges that the Indemnified Technology directly infringes any patent, copyright, or trademark, or misappropriates a trade secret of a third party ("Claim"). Adobe will pay the



Customer the damages, costs, and expenses (including reasonable legal fees) finally awarded by a court of competent jurisdiction against Customer, or agreed to in a written settlement agreement signed by Adobe, directly attributable to a Claim. Notwithstanding the foregoing, Adobe will have no defense or indemnification obligation or other liability for any Claim arising from (i) use of the Indemnified Technology in a manner contrary to the terms of this Agreement; (ii) modification of the Indemnified Technology by anyone other than Adobe or a party authorized in writing by Adobe to modify the Indemnified Technology; (iii) the combination of the Indemnified Technology with any other products, services, hardware, software or other materials if the Indemnified Technology would not be infringing without the combination, (iv) any third party products, services, hardware, software or other materials, or (v) failure by Customer to install the latest updated version of the Indemnified Technology as requested by Adobe to avoid infringement. If Customer's use of the Indemnified Technology under the terms of this Agreement is enjoined or Adobe determines that Customer's use may be enjoined, then Adobe may, at its sole option and expense, either (i) procure for Customer a license to continue using the Indemnified Technology in accordance with the terms of this Agreement; (ii) replace or modify the allegedly infringing Indemnified Technology to avoid the infringement; (iii) terminate the licenses and access to the corresponding Indemnified Technology, and refund (a) in the case of OnDemand Services, any prepaid unused fees as of the date of termination or (b) in the case of OnPremise Software, an amount equal to the pro-rata value of the OnPremise Software, calculated by depreciating the license fee paid by Customer, whether directly to Adobe, or to a third-party, for the OnPremise Software on a straight-line basis using a useful life of thirty-six (36) months from the date of initial delivery of the OnPremise Software to Customer, provided that Customer purges all copies of the OnPremise Software and related materials from all computer systems on which it was stored and returns to Adobe all physical copies of the OnPremise Software and related materials.

- 8.2. **Conditions to Indemnification.** The indemnification obligations set forth in this Agreement will apply only if (i) the indemnified Party notifies the indemnifying Party in writing of a claim promptly upon learning of it; (ii) the indemnified Party provides the indemnifying Party with reasonable assistance requested by the indemnifying Party, at the indemnifying Party's expense, for the defense and settlement, if applicable, of any claim; (iii) the indemnified Party provides the indemnifying Party with the exclusive right to control and the authority to settle any claim, provided, however, that the indemnified Party will have the right to participate in the matter at its own expense, and (iv) the indemnified Party does not admit fault or liability of indemnifying Party or of itself.
- 8.3. **Sole and Exclusive Remedies.** The indemnification rights and obligations in this Agreement are the indemnifying Party's sole and exclusive obligations, and the indemnified Party's sole and exclusive remedies, with respect to the subject matter giving rise to any indemnified claims.

9. Limitations of Liability

- 9.1. **Limitation on Damages.** EXCEPT IN CONNECTION WITH A BREACH OF CONFIDENTIALITY, OR USE OF ADOBE TECHNOLOGY BEYOND THE SCOPE OF ANY LICENSE GRANTED HEREIN: (I) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR: ANY INDIRECT, MORAL, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES; ANY LOSS OF USE, DATA, OR PROFITS; OR ANY INTERRUPTION OF BUSINESS - ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGE; AND (II) THE AGGREGATE LIABILITY OF EITHER PARTY WITH RESPECT TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE BY CUSTOMER PURSUANT TO THIS AGREEMENT FOR THE PRODUCTS AND SERVICES THAT GAVE RISE TO THE LIABILITY WITHIN THE TWELVE (12) MONTHS PRIOR TO THE CLAIM. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OR SOURCE OF ACTION, AND REGARDLESS OF ANY OBLIGATION STATED UNDER THIS AGREEMENT. THE LIMITATION ON DAMAGES AS SET FORTH IN THE PRIOR SENTENCE WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL BREACH OR A BREACH OF THE FUNDAMENTAL TERMS OF THIS AGREEMENT.
- 9.2. **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ALL PRODUCTS AND SERVICES ARE PROVIDED AS-IS. ADOBE, ITS AFFILIATES, AND ITS THIRD PARTY DATA, SERVICE, AND SOFTWARE PROVIDERS HEREBY DISCLAIM AND MAKE NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, GUARANTEES, OR WARRANTIES OF MERCHANTABILITY, ACCURACY, QUALITY OF SERVICE OR RESULTS, AVAILABILITY, SATISFACTORY QUALITY, LACK OF VIRUSES, TITLE, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR WARRANTIES OF ITS THIRD PARTY PROVIDERS. CUSTOMER ACKNOWLEDGES THAT NEITHER ADOBE NOR ITS THIRD PARTY PROVIDERS CONTROLS CUSTOMER EQUIPMENT OR THE TRANSFER OF DATA OVER



COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT 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. 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. General Provisions

- 10.1. **Proprietary Notices.** Any permitted copy of the Products and Services (or related materials) made by Customer must contain the same copyright and other proprietary notices that appear on or in the Products and Services.
- 10.2. **Assignment.** The Parties agree that Adobe is hereby entitled to assign and transfer all or part of its rights and obligations under this Agreement to any third party or Affiliate. Customer may assign this Agreement in its entirety to the surviving entity pursuant to a merger or acquisition of Customer upon advance written notice to Adobe if the assignment does not expand the scope of the license(s) granted. Except as provided in the preceding sentence, Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the prior, written consent of Adobe. Any extension of credit or installment payments to the assignee will be subject to Adobe's determination of assignee's creditworthiness. Subject to the above restrictions on assignment, this Agreement will inure to the benefit of and bind the successors and assigns of the Parties. Any attempted assignment in derogation of this section will be null and void.
- 10.3. **Governing Law, Venue.** This Agreement will be governed by and construed in accordance with the laws of the state of California, without regard to or application of conflicts of law rules or principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. In the event that a dispute arises with respect to the terms of this Agreement, the Parties agree that the exclusive and sole venue for resolution will be a court of competent jurisdiction within the County of Santa Clara, state of California, and the Parties agree to submit to the jurisdiction of the same.
- 10.4. **Force Majeure.** Neither Party will be liable for any default or delay in the performance of its obligations under this Agreement (except for any payment obligations) if the default or delay results from causes beyond its reasonable control, including but not limited to acts of God, terrorism, labor action, fire, flood, earthquake, governmental acts, orders, or restrictions, third party suppliers, denial of service attacks and other malicious conduct, utility failures, or power outages.
- 10.5. **Injunctive Relief.** Actual or threatened breach of certain sections of this Agreement (such as, without limitation, provisions on intellectual property (including ownership), license, privacy, data protection and confidentiality) will be deemed to cause immediate, irreparable harm that would be difficult to calculate and could not be remedied by the payment of damages alone. Accordingly, either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.
- 10.6. **Notice.** The Parties will give notices under this Agreement specific to the other Party by electronic mail to the other Party's e-mail address with the delivery receipt kept on file. Customer may give notice to Adobe to the following email address: ContractNotifications@adobe.com and Adobe to the Customer's email address stated on the Sales Order or as otherwise notified by the Customer.
- 10.7. **Customer Responsibility.** Customer will be responsible for all acts and omissions, including financial obligations, of Affiliates, agents, contractors or third parties who use or access the Products and Services.
- 10.8. **Independent Contractors.** The Parties expressly agree that they are independent contractors and do not intend for this Agreement to be interpreted as an employment, agency, joint venture or partnership relationship. Neither Party has the authority to bind the other or incur any obligation on behalf of the other.
- 10.9. **Third Party Beneficiaries.** Customer acknowledges and agrees that Adobe's licensors (and Adobe if Customer obtained the Software from any party other than Adobe) are third party beneficiaries of this Agreement, with the right to enforce the obligations set forth herein with respect to the respective technology of the licensors and Adobe.
- 10.10. **Purchase Order.** Any terms and conditions in Customer's purchase order are void and have no legal effect.

- 10.11. **Waiver; Modification.** Neither Party's waiver of the breach of any provision will constitute 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.
- 10.12. **Entire Agreement.** This Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all prior agreements and understandings, both written and oral, regarding the subject matter. In the event of any inconsistency between the provisions of the General Terms and an applicable Exhibit, the provisions of the Exhibit will govern; in the event of any inconsistency between the provisions of any applicable PDM and the applicable Exhibit or General Terms, the provisions of the PDM will govern; and in the event of any inconsistency between the provisions of a Sales Order and the applicable PDM, Exhibit or the General Terms, the provisions of the Sales Order will govern for the purposes of that Sales Order.
- 10.13. **Counterparts and Execution.** This Agreement (or components thereof, including Sales Orders) may be executed in one or more counterparts, each of which will constitute an original and all of which taken together will constitute one and the same Agreement. Electronic or digital signatures will be of equal effect and validity as signatures on original copies.
- 10.14. **Severability.** If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision will continue in full force and effect, and the Parties will substitute a valid provision with the same intent and economic effect.
- 10.15. **Export Rules.** Customer acknowledges that the Products and Services are subject to the U.S. Export Administration Regulations and other export laws, restrictions, and regulations and agrees to comply with them.
- 10.16. **U.S. Government Licensing.** For U.S. Government End Users, Customer acknowledges that Products and Services are "Commercial Item(s)," as that term is defined at 48 C.F.R. Section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. Section 12.212 or 48 C.F.R. Section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. Section 12.212 or 48 C.F.R. Sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

